

Report to: **Housing Review Board**

Date of Meeting: 28 March 2019

Public Document: Yes

Exemption: None

Review date for release None



Agenda item: 11

Subject: **Housing Policy Note on the Mental Capacity Act 2005**

Purpose of report: This report presents the draft Housing Policy Note on the Mental Capacity Act 2005 for approval by the Board.

The Mental Capacity Act 2005 applies to anyone who has dealings with people who may lack capacity, and provides the legal framework for acting and making decisions on behalf of adults who lack capacity to make some decisions for themselves.

There are increasing numbers of vulnerable people living in the community whose mental capacity is inhibited by disease, mental ill health, injury, or disability, and the council has a responsibility to safeguard their interests in line with the statutory requirements of the Mental Capacity Act and best practice set out in the Code of Practice.

This policy will be applied across the Housing Services Department to:

-) Facilitate the necessary decisions to be made in relation to council housing services, including homelessness.
-) Ensure the best interests of individuals whose mental capacity may be in doubt.
-) Minimise recourse to litigation.

Recommendation: **That the Board approve the attached Housing Policy Note**

Reason for recommendation: To provide a framework within which Housing Services staff operate to identify where mental capacity may be an issue, and the procedures to follow to establish this.

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Financial implications: No financial implications

Legal implications: The legal implications are set out within the report. Legal Services will advise sign off on all court proceedings where mental capacity is an issue. This will be picked up through Equality Impact Assessments on each decision relating to any tenant.

Equalities impact: Low Impact

Risk: Medium Risk

The council is required to have up to date policies that reflect and reinforce current practice.

Links to background information: [Mental Capacity Act](#)
[Code of Practice](#)
[EDDC Safeguarding Policy and Procedures](#)

Link to Council Plan: Continuously improving to be an outstanding Council

1. Introduction

- 1.1 The Mental Capacity Act 2005 provides the legal framework for acting and making decisions on behalf of adults who lack capacity to make some decisions for themselves.
- 1.2 The Act applies to everybody who has dealings with people who may lack capacity, and particularly if they have a professional relationship with the person.
- 1.3 EDDC staff interact with residents and members of the public on a day to day basis across the range of its business and functions, often on complex issues requiring understanding and comprehension of the decision being made, and the implications of that decision.
- 1.4 Housing staff, in particular, are dealing with some of the most vulnerable people in our community, often on sensitive and complex issues which impact significantly on their current and future living and accommodation arrangements.
- 1.5 The council has a responsibility to safeguard their interests in line with the statutory requirements of the Mental Capacity Act. Any mental capacity issues need to be identified early in the decision making process so that arrangements can be made for the decision to be taken in the best interests of the individual.
- 1.6 By raising staff awareness of their obligations under the Act and identifying mental capacity issues at an early stage, we aim to minimise recourse to litigation for those who lack capacity and facilitate appropriate and timely decisions to be made.

2. The Policy

- 2.1 Principles - There are 5 key principles in the Mental Capacity Act which will determine interactions with the customers of the Housing Services Department:

-) A presumption of capacity
-) Supporting individuals to make their own decisions
-) The right to make unwise decisions
-) Best Interests
-) Least restrictive option for their basic rights and freedoms

- 2.2 Staff Awareness - Staff will be expected to have a general level of awareness of the 5 principles as part of induction, and to operate on the basis of presumed capacity.

They will also keep in mind that any apparent inability to understand or to make decisions may be due to incapacity, requiring further consideration of how to proceed. As part of

this, safeguarding issues should also be considered and discussed with the Safeguarding Champion.

- 2.3 Housing Procedures - Housing procedures will incorporate best practice by:
-) confirming capacity at all appropriate opportunities (eg homeless applications, tenancy sign up)
 -) giving customers the opportunity to nominate someone to act on their behalf
 -) ensuring staff use simple plain language and different methods of communication
 -) making multiple attempts to contact customers in different ways
 -) offering practical assistance to aid communication and facilitate decision making
 -) using all reasonable methods to maximise a person's ability to make a capacitated decision before determining that they are incapacitated.

- 2.4 Consideration of Mental Capacity Issues - No-one can be labelled incapable simply because they have a particular diagnosis or medical condition (e.g. a learning disability or dementia), and the test for incapacity (incorporating a functional and diagnostic test) must be applied.

The formal application of the 2 stage test is only likely to be needed in exceptional circumstances where all efforts to facilitate a capacitated decision being reached have been exhausted. The council's legal services will need to be involved if a formal assessment of capacity is being considered.

An assessment should be carried out when a person's capacity is in doubt in relation to a particular decision, not a range of decisions.

- 2.5 Process for Housing Staff - Where housing staff are unable to engage with an individual or they appear either unable to understand or to make the decision before them, mental capacity must be considered as a possible reason.

Where there is any concern about capacity, the relevant manager will be alerted to determine whether to involve other professional expertise at that stage (eg. legal/ health/social care).

The relevant Council staff with an existing relationship with the person will be involved as necessary to facilitate a decision in the best interests of the individual.

Every step of the process should be recorded on the appropriate system by the relevant staff so that the actions taken and sequence of events are clear.

- 2.6 Cases Involving Litigation - On reaching the stage prior to legal proceedings being instigated, the relevant manager and a member of the legal team will review the case to ensure that all opportunities to enable a capacitated decision have been provided.

If there is no alternative but to take legal action, a formal assessment of capacity will be requested from the relevant professional and the relevant legal process followed.

3. Action Required

- 3.1 The attached policy note will form part of a range of Housing Policies approved by the Housing Review Board. It will be placed on the website and reviewed periodically to ensure it is up to date and relevant.

- 3.2 Staff in the Housing Services Department will be briefed on the policy and its application to their work. Any training needs will be identified and addressed as part of embedding the policy into current housing practice and procedures.
- 3.3 It is recommended that the Board approve the attached Housing Policy Note on the Mental Capacity Act 2005, **Annex 1**.