



Family homes:

***Using parental property to provide future housing
for people with learning disabilities***

Guidance for families and advisors

Nigel King

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Options across the UK

Arrangements for housing, Social Services, benefits and law vary across the UK. Because Housing Options primarily works in England the report focuses mainly on England. In other parts of the UK advice may need to be taken about differences in legislation and how this may affect possibilities for arranging housing for people with learning disabilities.

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1 SUMMARY

Ageing parents and other relatives supporting a person with learning disabilities in the family home face huge difficulties securing future accommodation. Because of the shortage of housing and uncertainty about statutory provision, many families seek to make their own arrangements. The family home is a possibility provided the necessary support can be arranged. If the home is owned it can be passed on to the person with learning disabilities. However this is unlikely to offer the security families are seeking in the long-term. Other options may need to be considered including putting the property into a Trust Fund or gifting it to a housing provider in return for certain residency guarantees. Where the family home is rented there is the possibility of passing on the tenancy to the person with learning disabilities.

Background

Most people with learning disabilities (60%) live in the family home supported by relatives. Parents recognise that this situation can not go on forever, not least because their own ageing can make it impossible for them to continue to provide the person with learning disabilities the support they need. There are two questions to be addressed: firstly where the person will live and secondly who will provide the necessary support. Local authorities have a responsibility to make some provision for both of these but families may have little control over what is provided which is why many try to make their own arrangements.

The family home could be considered as a possibility, even for people who need a lot of support. The person may be able to live there alone, or share with others. These may be friends who also have learning disabilities. State benefits can cover living expenses and local authorities can arrange for support to come into the home as needed, whether this is 24-hour care or someone dropping in just to help with budgeting. These kinds of arrangements where people have tenancies for or own their homes are known as 'supported living'.

Local authorities are being encouraged to work in this way instead of group and residential homes being the only options. For example, the recent England Learning Disability Strategy (Department of Health, 2001) has earmarked additional money for supported living arrangements for people living with older carers. There may also be financial incentives for the local authorities to do this where the family home is available, because of savings on alternative accommodation.

This project explored how the family home, whether owned or rented, could be used to provide secure accommodation for the person with learning disabilities in the future. It was undertaken as part of the Foundation for People with Learning Disabilities' Growing Older with Learning Disabilities (GOLD) programme.

Findings

Staying in the family home

The option of a person with learning disabilities staying in the family home without the familiar support of their relative (or relatives) may arise in the following circumstances:

- Their relative continues to live at home but is physically unable to continue to provide the level of care needed
- Their relative has died or is in hospital or a care home

Sometimes family members may choose to move out in advance of these situations to ensure the necessary support is put into place at a time of their own choosing and not during a crisis.

Possible benefits of the person with learning disabilities staying in the family home include:

- It is the person's home
- Familiar property, neighbours and locality
- No trauma of moving
- More individual support compared to residential care
- More certainty about the future
- Necessary adaptations may already be in place
- The cost of alternative accommodation to the local authority

It may not be a good option for everyone, for example, if the home is too big, or in a bad state of repair. If the home needs to be shared, there may be strong feelings about other people living in space once occupied by relatives. Also some local authorities may be reluctant to enter arrangements where people have different rights of security in the home, e.g. if one person owns it and those moving in are lodgers.

When the family home is owned

Three out of four households are homeowners and the home is often a family's largest financial asset. Many parents of people with learning disabilities are keen to use its value to make provision for their son or daughter with learning disabilities. Passing property on is one of the few ways of avoiding compromising entitlements to benefits or social care (however Social Services may seek to recover costs if they think the person is a "wealthy" owner).

If intending to pass on property to a person with learning disabilities, families should consider:

- How maintenance and major repairs will be paid for and who will be able to arrange these
- If the person at some time in the future goes into residential care the local authority has a duty to place a "charge" on the property to recover the cost of care (Section 22 of the Health and Social Services and Social Security Adjudication Act 1983)

- If other relatives inherit a share, the property may need to be sold.

Discretionary Trusts

Trusts are legal arrangements whereby assets are managed for other people: the beneficiaries. Property and money held in Trust is not taken into account when assessing entitlement to benefits.

Trusts are drawn up by solicitors and include things such as:

- Who the beneficiaries are (in this case the person with learning disabilities)
- Who the Trustees are (these may be relatives or friends)
- What the aim of the Trust is, and the responsibilities of the Trustees (e.g. to benefit people with learning disabilities).

The advantages of putting the family home in Trust are:

- Money can be held in the Trust to pay for maintenance and repairs
- Trustees can organise the maintenance
- The assets will not affect benefit payments or local authority funding of support.
- If circumstances change in the future the Trustees can sell the home and use the money to obtain more appropriate accommodation.

Difficulties can arise finding Trustees or ensuring they continue to act in the best interests of the person with learning disabilities. For example, there can be a conflict for some relatives who are acting as Trustees if remaining assets are transferred to them on the death of the beneficiary. National Mencap has a company called "National Trustees for the Mentally Handicapped Ltd" which may be used instead of families finding their own Trustees. However this is intended for managing money rather than property.

Gifting the property

An alternative to setting up a Trust is to gift the property to a charity in return for some guarantees, which allow the person with learning disabilities to continue living in it. Help the Aged has a gifted homes scheme that insures and maintains the property. There is no similar scheme for people with learning disabilities but Golden Lane (part of Mencap) can sometimes manage properties.

Registered Housing Associations are an option. They are considered 'social landlords' because they do not make profits for shareholders but are governed by a board of volunteers. They will be most interested if:

- They have other properties in the area
- The property is in good condition
- Social Services have agreed to provide support in the home
- They provide accommodation for other people with learning disabilities

Legal advice is that charities have "to assess the terms proposed under the gift ... to ensure that the benefits it will obtain outweigh the costs of accepting any conditions contained in the terms of the gift".

Selling the property

If the family home is unsuitable, it may be sold to purchase something that suits the needs of the person with learning disabilities better. The same options of private ownership, putting it in Trust and gifting still apply.

Rented Accommodation

Whether a person with learning disabilities can continue living in a rented family home will depend on the type of tenancy.

Secure Tenancies are available only in local authority accommodation. There is only one right to succession. This means that a son or daughter could take the tenancy from a parent, but has no right to do so, if for example, it had already passed from one parent to another on death. Even if the tenancy is passed on, local authorities may try to relocate the person if the property is considered too large.

Assured Tenancies are generally provided by housing associations. There is no right to succession although the regulations say that tenancy should be granted to any family member who has been living with the previous tenant for a year before their death.

Short Term Assured Tenancies are usually offered by private landlords. There is no right to succession, and there is no security beyond the term of the tenancy, which is often only six months.

One way to secure the property for a son or daughter is for them to become joint tenants while the parent(s) is (are) still living in the property.

Implications

Staying in the family home may be desirable for many people with learning disabilities. Making this happen however depends on ensuring security of accommodation in the long term and Social Services agreeing to provide the support that is required in the home. This is complex for both homeowners and tenants to achieve. Families are advised to plan early if this is to be an option. Local authorities can work proactively by, for example, talking to housing associations and offering people with learning disabilities tenancy rights in council accommodation.

Further Reading

Bigby, C. (2000) Moving on without parents. London: Paul H. Brookes.

Harker, M. & King, N. (2000) Leaving Home, Moving On: Housing options for people with learning disabilities. London: The Mental Health Foundation.

Harker, M. & King, N. (2000). Making Housing Choices. Brighton: Pavilion.

Walker, C. & Walker, A. (1998). Uncertain Futures – People with learning disabilities and their ageing family carers. Brighton: Pavilion.

2 INTRODUCTION

Dear Mr King

In the recent issues of “Connect” there was a brief note on your study.

I am aged 72, my wife similar, my son has severe learning disabilities with a mental age of about 3 years, is aged 40 and lives at home with us (with some respite care).

Looking to the future we often wonder whether it would be possible for him to continue to live in our fairly large, detached bungalow with 24-hour care, possibly with one or two similar lodgers, after we are no longer able to care.

I should be grateful if you would send me any information, advice or experiences your Partnership has...

Typical example of letters received in response to advertising the study.

This report examines the different ways parents and other relatives can use their property, the family home, to provide permanent housing for a son or daughter with learning disabilities.

The study is intended to help parents and their advisors make sound, better informed decisions on housing when planning for the long-term future and to answer the kinds of questions posed in the above letter.

It also addresses the part social landlords can play in helping people with learning disabilities to live independently in their own home.

The study was part of the Foundation for People with Learning Disabilities' “Growing Older with Learning Disabilities” (GOLD) programme of research and practical initiatives. It will be of particular interest to families with a son or daughter in middle age or beyond where parents are themselves approaching or indeed past normal retirement age.

2.1 Background

In the UK two-thirds of all households now own their own homes. Looking at those approaching retirement the numbers are even greater. Three out of four of these families are homeowners. In the older age range the majority own outright with no mortgage. It is also the case that the majority (50-60%) of adults with learning disabilities are supported by relatives (mainly parents but occasionally grandparents or other relatives) at home not in care homes or similar places; 40% of family carers are over 60. This means large numbers of adults with learning disabilities live with older relatives who are homeowners.

The one in four who are tenants rather than owners may equally wish to help a son or daughter secure their future but are unsure how this can be done, if at all.

We are beginning to see growing numbers of older people with learning disabilities. There are adults in their 50s and even 60s still being cared for by relatives who are in their 70s or 80s.

HOUSING OPTIONS

Housing Options is an independent, advisory service for people with learning disabilities, their relatives and housing and care providers. It was established in 1996 against a background of growing evidence of a shortfall between the need for more places for people with learning disabilities and the supply through the traditional routes.

Its emphasis is on providing support for individuals in a way which allows much greater choice, control and independence: people living in ordinary houses and flats, in the community, with a package of support designed to meet the individual's needs over which the person exercises much greater control.

The service exists to:

- to provide advice on rented housing
- provide advice on home ownership options
- offer a consultancy service to individuals and organisations concerned with the housing of people with learning disabilities
- promote self-contained housing options for people with learning disabilities
- increase awareness of home ownership alternatives
- increase the supply of shared ownership housing
- increase the supply of other forms of home ownership

The service does not have the resources to offer extended casework but may be able to assist by suggesting suitable individuals or organisations. The service is provided by advisors who are entirely independent and are expected to give advice which is influenced solely by the circumstances and interests of the client.

The service has a part time administrator and two specialist advisors. It has been supported and funded by the Housing Corporation, Advance Housing & Support Ltd, New Era Housing Association, Notting Hill Home Ownership, North British Housing Association, and Stonham Housing Association. A detailed evaluation of the service has been carried out by the Norah Fry Research Centre, Bristol University supported by the Joseph Rowntree Foundation. The report *Pushing Open the Door* by Ken Simons was published by the Policy Press.

This study was prompted in part by the author's involvement in Housing Options, an advisory service for people with learning disabilities. Housing Options repeatedly receives enquiries as to how parents can best use their property when they can no longer provide care and support themselves so it can continue to house a son or daughter. It often seems to them that Social Services do not want to be involved until the parents failing health or death forces the issue.

It is difficult to provide satisfactory advice to parents who would like their adult sons and daughters to be able to continue to live in their home:

- There is an the absence of models properly researched with example agreements and contracts
- Few social landlords (or other agencies) are interested or knowledgeable enough to be helpful - when giving advice through Housing Options it is difficult to know who to put parents in touch with
- Good arrangements to allow people with learning disabilities to continue in the parental home and provide for management, maintenance and possibly some support have proved elusive
- The few available possibilities have flaws, are not widespread and are more limited than they may need to be
- The options put to parents and their adult sons and daughters are not always the best and parents are frequently not made aware of the full range of possibilities
- The care managers, social workers and other care staff are understandably ill equipped because of their specialisation and training to give advice on complex housing matters although frequently they recognise the crucial part accommodation plays in how care is provided and the quality of life possible. The time they can give is also limited by large caseloads.

Parents (and other relations) frequently want to find a way of securing their relative's future housing and care, if possible, while they are still able to help. A planned transition to more independent living, with at least the housing element secured, must be better than a crisis move, which usually limits user choice.

2.2 The Problem

There are a large number of possibilities in terms of how property might be secured for a relative. There is no easily accessible source which sets these down and works through the legal and practical mechanisms or spells out the consequences for all the parties (landlords, relatives and the person with learning disabilities). Enquiries received by Housing Options suggest there may be more alternatives than are generally appreciated.

There are perceived to be few good alternatives open to families. At present an isolated referral to a social landlord may not prove very satisfactory in practice. An apparently complex, one-off offer of a property looks unattractive and too time-consuming to be worthwhile. A local association may have little knowledge of or interest in learning disabilities. Local authorities will not normally take on properties and increasingly

have already, or will be, transferring their housing stock to social landlords or alternative organisations.

One issue that has inhibited progress is that of adapting to changing circumstances. Arrangements need to be permanent and secure but new circumstances may warrant a move from the house. There need to be checks and balances to ensure the person with learning disabilities is not exploited but also that the social landlord is left in a fair economic position. The parental property provides equity, part of which could be used to provide other support, facilities or housing if the property became unsuitable at some point.

If satisfactory mechanisms can be found for linking parents with landlords and using parental property there are benefits all round.

- The person with learning disabilities can be enabled to stay in their home, in a familiar locality. Both aspects can be very important for people with learning disabilities.
- The property will be properly managed and maintained in a way that may be difficult for a person with learning disabilities to achieve particularly where legal capacity is lacking.
- Social Services may avoid having to pay some of the accommodation element of care, which might otherwise fall completely on the authority.
- Additional accommodation may become available to house other people (with or without learning disabilities).
- It helps to increase the supply of housing for people with learning disabilities.
- The social landlord grows its business in a very useful way, possibly at no capital cost. A gifted property (one option) may provide an asset on the balance sheet - depending on the arrangements.

2.3 Objectives

The aim of this study was to do something to make all the parties better informed and thus able to realise these benefits. The purpose of the research funded by the Foundation for People with Learning Disabilities was “to help people with learning disabilities and their family carers so they can stay in the parental home for as long as it remains satisfactory”. What this report does is:

- i. Investigate the different ways relatives may use their property to provide permanent, secure, maintained housing for a person with learning disabilities
- ii. Set down the mechanisms and evaluate advantages and disadvantages for the key parties
 - the social landlord
 - the person with learning disabilities
 - the relatives

- iii. Offers a computer model to calculate the value of the equity released to an organisation when a property is gifted. This can be used to establish for example how many years maintenance could be funded from the equity alone and if additional support could be afforded funded by equity release
- iv. Sets out forms of agreement.

2.4 Method

The project was overseen by a Steering Group drawn from social landlords, care provider agencies, Social Services, families and organisations that represent people with learning disabilities and their family carers. This group and their organisations contributed much of the material and guidance.

In order to get experience and issues directly from families notices inviting submissions were placed in a number of publications likely to be read by families with a son or daughter with learning disabilities, or housing or support providers. This had two results:

- i. Examples and lessons were offered by families and some of these appear in an abridged form in the report
- ii. An almost equal number of individuals and organisations contacted the researcher seeking advice.

A considerable amount of the material on the practical experience of using the parents' property to provide permanent housing on an individual or shared basis came from interviews and small group discussions with four Social Services departments and four Registered Social Landlords (RSLs - a modern term for housing associations). These were drawn from different parts of the UK. This was supplemented by a number of telephone interviews with individual families seeking to plan for the future and staff in RSLs currently dealing with accommodation issues. A workshop was also held for seventy people with learning disabilities and their parents to consult on the key issues the report should address.

Additional guidance and ideas came from interviews with a number of specialist agencies in touch with families.

One reason for the study is to make it easier for families, Social Services and housing agencies to work together to get good long-term housing and support provision. In order to do this the final steps were to:

- Obtain expert legal advice on issues where both families and professionals expressed doubt or where the study revealed a different understanding of what was legally possible or correct
- Get expert welfare benefits advice to clarify matters of eligibility for different state benefits
- Draft a model Deed of gift to make it easier for parents to donate property to a social landlord on acceptable terms

- Create a spreadsheet to model the effects of ongoing management, maintenance, support and other costs on the equity value of property.

2.5 Organisation of the Report

Chapter 3 gives an overview of all the options identified in the course of the study for using the family's property directly to house a son or daughter after the parents or other relatives have moved out.

Chapters 4, 5, 6 and 7 then describe and evaluate the three principle alternatives and the different variants in detail. These are:

- Putting property into Trust by Will or a Deed or arranging for the property to be Inherited directly
- Giving or selling a property to a social landlord
- Arranging for a son or daughter to succeed to or inherit a tenancy.

Chapter 6 also introduces a financial model to appraise the gifted housing approach. The model is available on the Foundation for People with Learning Disabilities web site www.learningdisabilities.org.uk.

Chapter 8 draws together the principle lessons on using the family home to secure the housing element of a care and support package for an older person with learning disabilities.

Throughout the report brief summaries of what has happened in different circumstances are used to illustrate strengths and weaknesses of each option. These vignettes are all real examples but any names and sometimes locations or details have been altered to ensure anonymity of the individual or family concerned.

The nature of the project combining research into present practice with some new developments means that there is a mixture of material. Chapter 6 in particular may appear complex and challenging as it presents new thinking, financial modelling and material on equity release. Not all chapters will be relevant to all readers. Families who are tenants who want to know more about planning for a son or daughter to continue the tenancy will find chapter 7 the most useful. Families who own property will find chapters 4 and 5 (and possibly 6) of most interest.

3 PLANNING FOR HOUSING - THE OPTIONS FOR FAMILIES AND ROLE OF SOCIAL LANDLORDS

3.1 An Asset or a Home

Family owned property can be used in two main ways:

- i. As an asset which can be sold, and the proceeds used to provide different accommodation or to buy support and meet other living expenses
- ii. Used directly to provide continuing housing

The main focus in this study is staying in the family home. The former course opens up a considerable number of additional alternatives some of which are described in “Ownership Options” (King, 1996) and “Making Housing Choices” (King and Harker, 2000). The link between the two approaches is that a family who own a property and arranges for a son or daughter to continue living in the family home can preserve the asset, so that at some point in the future if circumstances change, the option remains of selling and using the proceeds to meet the changed needs more appropriately. A number of the arrangements outlined apply to alternative accommodation as well.

For families who **do not own** then only the second course is available and Chapter 7 concentrates on the possibilities for passing on tenanted property.

3.2 Reasons for Remaining in the Family Home

The case studies illustrate many reasons it may be desirable or beneficial to plan around continuing use of the family home:

- Property occupied as the principal residence does not count as an asset for the purposes of Income Support. Property is one of the very few ways of making long-term financial provision for a relative in a way that does not affect benefits
- It is “natural” to want to continue to live in the person’s own, familiar home as long as it is satisfactory. In addition, for some people with learning disabilities adjusting to change is extremely difficult. To stay in a familiar property, in a familiar area, is valuable in itself and contributes to quality of life
- To have more space and facilities than would be available in the likely alternatives. Particularly true if the alternative is residential care or the family home has been adapted
- To avoid trauma of moving at a time when the son or daughter may have lost a parent
- To give certainty about the future
- To give greater security and sometimes a level of informal support from neighbours.

Despite these attractions we found Social Services practices and views about using parental property differ. Some, particularly where housing is expensive, have come to see using parental property as an entirely normal, proper, indeed valuable option. Others were wary about agreeing to plan on the basis of continued use of the parental home.

The reasons given were:

- The property being too large for someone to live in on their own, inappropriate or potentially costly to maintain
- Concerns about the cost, logistics and risks of supporting people to live independently. These concerns were most prevalent where Social Services do not have an established supported living service
- Sharing with others may be proposed as a way of getting a more cost-effective service but also as a means of addressing the risk of isolation. However a second set of concerns then arise as to the acceptability of incoming residents to the person whose house it is and the lack of security of tenure for the incoming resident where the family home is effectively owned by only one of the residents
- Doubts about the ongoing management and maintenance of the property and who would deal with this.

In one local authority Social Services staff in addition expressed the view that housing was not their concern and were consequently unwilling or unable to tackle the housing element of the individual's needs. This response underlined the continuing need for policy makers to encourage Housing and Social Services to work together better.

Another authority which now routinely uses family property in planning and arranging services commented that parents often have more power than they think to influence outcomes. Parents may have more time to pursue options and resolve problems than the social worker whose role is primarily to provide access to support services.

3.3 Options - An Overview

The best alternative depends on:

- Family circumstances
- Aspirations of the son or daughter
- Social Services (or Health Authority/ Trust) willingness or ability to provide a suitable support package.

The main possibilities for an owner occupier family are:

- Disposal to a third party - by gift or sale
- Pass on to son or daughter who inherits it directly
- Place the property in Trust.

For a tenant family the possibilities are:

- For the son or daughter to succeed to the tenancy
- To inherit a tenancy
- For a new tenancy to be granted.

Under each ownership heading there are permutations.

Disposal to a third party could be selling or giving to another relative, landlord, or a charitable organisation such as Mencap or the National Autistic Society and we found examples of all these. Registered Social Landlords (RSLs) are obvious organisations to receive properties. Their business is management and maintenance, they are not-for-profit organisations (many are charitable in nature) and some have expertise in supporting people with learning disabilities. The options here include:

- i. Gifting property to a social landlord which undertakes management and maintenance using the equity eventually released to meet the cost
- ii. Purchase of some or all property by RSL, releasing equity, which then lets the property to the person with learning disabilities who may be eligible for Housing Benefit
- iii. Purchase of the property equity by RSL with the simultaneous grant of a lease back to the person with learning disabilities who continues to live in the property as a shared owner
- iv. Property gifted or sold to RSL which lets other rooms in the property so the person with learning disabilities does not live alone. The resulting rental income could be applied a number of ways including helping to fund additional support or put into a Trust. Impact on benefits is critical.

Although there are some advantages to using an RSL in principle these options could work with different types of landlord. If the property were gifted to another relative then an association could contract with them simply to provide a management and maintenance service.

There are more complex alternatives where several families decide to pool resources to provide for a group. These options can be based on one family's existing property but more often involve the purchase of a different, larger property. The possibilities are set out in Chapter 7.

Inheritance is straightforward and arranged through the parents' will. Where a person with learning disabilities inherits property, an association could contract to provide management and maintenance funded from eventual sale of their property and/or additional money deposited by parents or held in Trust.

Trusts. Property can be put in Trust to be administered by Trustees. How Trusts work is explained in detail later. They provide a mechanism for:

- making long-term financial provision for adult sons and daughters in a way which does not compromise entitlement to benefits or financial support from Social Services

- For managing and maintaining property. Trusts may also hold funds to pay for this. Trustees arrange maintenance so Trusts also solve the problem of a person lacking in legal capacity being unable to contract for a maintenance service.

If property is held in Trust either Trustees may arrange management and maintenance directly or it is open to them to contract with someone else - a property management company, an RSL or similar organisation.

Moving. A final option which we came across in three examples involves parents moving from the family property to more suitable accommodation for themselves (this might be sheltered housing or residential care). The son or daughter continues to live in the property. Arrangements depend on the tenure of the parental property. In one interesting case described in detail later the parents moved out, leased the property to a local housing association that adapted it to accommodate two other people who now share the property with their daughter.

This option is best viewed as the step to putting in place and testing long-term arrangements while parents are still able to provide practical help.

The main options and potential eligibility for Housing Benefit - if the individual(s) qualify are summarised in the table below.

Eligibility of rent for Housing Benefit

	Gifted to Landlord	Sold to Landlord	Inherited by person with learning disabilities	Held in Trust	Held by Third Party
Live Alone	✓	✓	N/A	Note 2	Note 3
Live with Others	✓	✓	Note 1	Note 2	Note 3

Note 1. If you own the property outright then rent is not paid and eligibility for Housing Benefit does not arise. If others share the property they can be asked to pay rent which may be eligible for Housing Benefit.

Note 2. Sharers may not be eligible for Housing Benefit if a member of **class** of beneficiary the Trust is set up to assist e.g. "people with autism". The wording of the Trust Deed is critical. They may be declared ineligible for housing benefit if it is decided that the arrangements were created as "a means of taking advantage of the housing benefit system".

Note 3. If the third party is a close relative who moves into the family home then Housing Benefit may not be paid. If however the property is owned by a relative who lives elsewhere then Housing Benefit remains a possibility.

3.4 Support at Home

There are two recurring themes in questions by parents trying to plan around the family home; how would support be provided and how secure are arrangements - in particular how would the risk of social isolation or abuse be met.

In essence Social Services are responsible for:

- i. **Assessing needs** of a person with learning disabilities under various legislation (NHS and Community Care Act 1990, Disabled Person's Act 1986, Chronically Sick and Disabled Person's Act 1970)
- ii. **Meeting the assessed needs** subject to the authorities' resources. (There have been a series of court cases some still in progress, involving people with learning disabilities and their "rights" to support services irrespective of a local authorities budget. If resources are limiting provision up to date legal advice may be required).

How needs are to be met is very much a matter for the authority although guidance and good practice is that the wishes of the service user and family carers should be taken into account. A person with learning disabilities living in their own home does **not** change their rights to support or the obligations of the local authority.

Local authorities are obliged to provide certain welfare services if they decide it is necessary to meet a person with learning disabilities' needs. These include:

- Practical assistance in the home
- Meals
- Assistance in carrying out adaptations to the home
- Provision of extra facilities in the home for safety, comfort or convenience
- Provision of (or help in obtaining) telephones (including special equipment), television, radio, library or similar facilities, holidays, recreation, access to educational facilities, transport to or from services
- Social work, advice and support
- Facilities for social rehabilitation and adjustment
- Facilities for occupational, social, cultural and recreational activities, including payments for people at work.

(National Assistance Act 1948, Chronically Sick and Disabled Person's Act 1970.)

The support possibilities for people living in their own homes include:

- Peripatetic or floating support - someone who visits regularly - once a week, three times a day - whatever is required
- Support tenant - someone lives in the house and provides a limited amount of practical and social help
- 24-hour support from care staff, one (or more) of whom sleep in if necessary - the traditional means of support in registered homes
- CVS volunteers or befrienders from an established volunteer scheme

- An element of mutual support if sharing with others
- Support from a “community network” - these are set up by a key worker who lives nearby and consists of around ten people who each have their own home but live close enough to support each other
- Informal support from relatives, friends, neighbours or a “circle of support” deliberately set up around an individual
- Accessing facilities and services in the community available to all who qualify/need them e.g. community nurse, GP, meals on wheels.

Where a support package is required this should be **funded** by Social Services (occasionally in part or in whole by Health) but the **support** can be provided by a number of agencies. This may be Social Services directly or a private or charitable care agency who have a contract with Social Services. If the property is managed by a housing association under one of the arrangements outlined earlier they may also be able to provide support. In a few of the examples Social Services had considered paying neighbours where there was an established, if unofficial, network of support around the individual. Finally there are two funding schemes which allow the individual more direct control of the care arrangements; Direct Payments by Social Services under the 1996 Direct Payments Act or support from the Independent Living Fund. (The ILF provides funding of up to £375pw to people with disabilities living independently subject to the local authorities contributing £200pw).

In practice the Social Services Departments have to make judgements about the cost effectiveness of alternatives. This has tended to mean planning around supporting a small group of people sharing the property. In turn, when considering the suitability of the family home both the location for a compatible group and suitability for a group are considerations for Social Services.

3.5 Supporting People and Housing Benefit

At present Housing Benefit can be claimed by people on a low income or with no income to pay some or all the rent. If a person with learning disabilities qualifies for Income Support they automatically get 100% Housing Benefit. The rent can include some services such as property maintenance, warden support, counselling, an alarm system, which qualify for Housing Benefit.

By April 2003 the Government plans to alter this system so that Housing Benefit purely funds rent and not support services. The money that would in the past have been paid through Housing Benefit will instead be given to local authorities who will decide on the allocation to different groups and individuals who need these kinds of support - sometimes referred to as intensive housing management.

One aspect of the changes of interest in planning around the family home is that home owners, who by definition are not currently able to claim Housing Benefit because they pay no rent, **will** be eligible along with shared owners and tenants to receive help under the Supporting People proposals.

SUPPORTING PEOPLE

“Supporting People” is one small element of the Government’s overhaul of the welfare benefits system. The broad aims are for services:

- To enable people to remain, or establish themselves independently, in the community. This may be in a tenancy, their own home, or specialised supported housing
- To be part of the range of preventative strategies being developed by local authorities
- Which may form an element of a package of care and support provided to a vulnerable person.

Specific Grant

- A new grant specifically for the purpose of funding support is to be introduced
- It will be administered by local authorities
- The purpose of the grant will be to promote independence, prevent people entering more institutional settings, assist re-settlement in the community
- The grant will **not** be tied to property but focused on people and as a result:
- Owner occupiers will become eligible (at present Housing Benefit is only available to tenants).

Size of Grant

The grant made available to local authorities will be an amalgamation of existing funding streams.

The impact on services

Issues raised by “Supporting People” include:

- The grant is targeted at lower support needs, not personal or intensive care
- Individual eligibility based Housing Benefit funding by central government moves to a cash limited budget administered through local government
- Uncertainty over the treatment of registered care homes and problems of inconsistency with new Care Standards Act 2000 arrangements for registration of services (England and Wales).

3.6 Local Authority Charges and Housing

If a local authority is asked to assess care needs and then offers **residential care** it is obliged to apply a statutory means test and charge residents. This has been controversial when applied to older people because an elderly person who is a homeowner can be forced to sell their home in order to meet the local authorities charges. The person's assets are run down until they fall below a certain figure, usually £10,000, at which point the local authority meets the costs of care.

A Royal Commission was established to examine the whole issue of meeting the costs of care. Health care under the NHS is free and many people see little distinction between this and social care in a local authority home which the individual is forced to pay for if they can. The Commission reported in 1999 (see <http://www.open.gov.uk/royal-commission-elderly/>).

At present a local authority can place a legal charge on a residents property under Section 22 of the Health and Social Services and Social Security Adjudication's Act 1983. Parents exploring using the family property raised the question of whether similar rules would apply to a younger homeowner with disabilities. The position is:

- (i) If a non-retired person with learning disabilities is placed in **residential care** by a local authority that authority has a similar power to create a charge over the persons property if they are an owner
- (ii) If a local authority provides non-residential care i.e. domiciliary they have **discretion** to levy a charge. (Section 17 of the Health and Social Services and Social Security Adjudication's Act 1983)
- (iii) The local authority cannot require someone to pay more than it would appear reasonable for the person to pay. Arguably if charges were so high that it threatened the individual's ability to continue to live in their own home this would not be reasonable. Local Authorities policies and practices on charging vary considerably and the Government intends to bring greater consistency
- (iv) Under the 1983 Act the local authority does **not** have power to create a charge on a person with learning disabilities' home if the individual fails to pay for **non-residential** services. It is however open to an authority to recover arrears as a civil debt in a Magistrates court
- (v) There is nothing in the legislation to suggest that a local authority can withdraw or refuse to provide services solely on the grounds someone will not pay.

To provide an additional safeguard it is open to a family to put property into a Trust so it benefits the son or daughter but is not directly owned by them. This is the subject of the next chapter.

4 TRUSTS AND INHERITANCE

4.1 How Discretionary Trusts work

A Trust is a legal arrangement whereby assets (money, investments, property and similar things) are managed by Trustees for the benefit of others such as people with learning disabilities. The assets can include a house hence the possibility of putting the family home into a Trust as part of planning.

What is a Discretionary Trust and why are they used?

Discretionary Trusts are set up by parents or other relatives as a way of making long term financial provision for people with learning disabilities. The reason a Trust is useful is that assets once put in Trust do not belong to either the donor, “settlor” in legal jargon (parents) or the “object” of the Trust (son or daughter who is intended to benefit). This means that the capital held in the Trust is not taken into account when assessing entitlement to state benefits like Income Support or local authority obligations to fund care.

If parents leave a will which says words like “our son hereby inherits our worldly goods” and the goods amount to more than about £3,000, the effect will be to immediately take their son or daughter out of some Social Security means tested benefits. This includes Income Support, administered by the Benefits Agency or Housing Benefit administered by the local authority. Local authority (Social Services) financial support may also cease until the value of the inheritance falls below a threshold level. In addition if the son or daughter is unable to manage money then the Court of Protection can get involved. They will appoint a person called a “receiver” to look after the money and other assets. The receiver may not be the person the parents or person with learning disabilities would choose.

Trusts are used to pay for extra things which Social Security benefits may not fund: a holiday, new clothes, electrical goods, special equipment. Importantly a Trust can also hold, manage and maintain the parental home.

Other reasons parents give for creating a Trust to help provide some financial protection into the future include:

- Fears that the local authority will not always continue to provide care or will provide insufficient care
- To provide a source of money to “top up” what a local authority is prepared To pay for care or to obtain better quality or a different care package
- To enable a son or daughter to remain where they are rather than be forced to move
- To permit more choice and options now and in the future

4.2 Creating a Discretionary Trust

A Trust consists of a few pages usually drawn up by a solicitor that cover such matters as:

- The purpose of the Trust
- Who the beneficiaries are - the 'object' of the Trust
- Who the Trustees are - the administrators of the Trust
- How new Trustees, if needed in the future because a Trustee dies or no longer wants to do the job, are to be appointed
- How Trustees' fees and expenses are to be met
- What powers, duties and discretion Trustees have including investing, making of payments and buying or selling property
- What happens to funds held in the Trust after the prime beneficiary dies.

It is important that Trustees have reasonable discretion both to satisfy the legal requirements of a Discretionary Trust and to allow them to adjust to changing circumstances and legislation in the future. It may be for example that at some point the property will become unsuitable for the son or daughter who might be better off in sheltered housing or a different environment. Trustees need the discretion to sell the property and allow a move if this is in the beneficiary's best interests.

Parents are usually told to give Trustees a letter setting out their wishes as to how Trustees should act in the future and to seek Trustees' agreement to follow the parents' preferences. This kind of letter is however for guidance only and is not legally binding.

A Trust is usually brought into effect on the death of a parent (or other relative) as an integral part of the person's **Will**. Other relatives or friends can contribute to the Trust. A Trust can also be created by drawing up a **Trust Deed** during the lifetime of the person (settlor) who wants to put money into the Trust. Both are possible.

Characteristics of a Discretionary Trust

A Discretionary Trust is only one of many different types of Trust but it is particularly appropriate for people with learning disabilities who will continue to need care and support. It is termed discretionary because the Trustees appointed to administer the Trust have **discretion**, subject to the terms of the Trust, as to how, when and to whom the capital and income of the Trust are paid.

The intended beneficiary has **no right** to either capital or income and has no right to make claims for payments. If they did then Social Services and the DSS might challenge the Trust arguing the client/claimant effectively possessed the assets.

A further common characteristic of a Discretionary Trust is that the intended beneficiary e.g. son or daughter belongs to what is termed a "class" of people and is **not the sole beneficiary** of the Trust. Thus the Deed might say "the Trust is for all people with autism living in Wales" and the son or daughter counts as a beneficiary because they have autism and live in Cardiff.

In summary, under a Discretionary Trust - unlike some other forms of Trust - the son or daughter has no absolute right to either the capital or investment income of the Trust. Trustees have discretion about what payments are made, subject to the terms of the Trust. The principle beneficiary may not be the only possible beneficiary.

Parents are often reluctant to accept these defining features of a Discretionary Trust but they are essential if the Trust is to be effective in providing long-term protection and there are not many alternatives.

It is also worth bearing in mind that **not** to make any provision at all for a son or daughter on the grounds that another member of the family will look after them or that the state will provide may not be a wise course. This is because under the Inheritance (Provision for Family and Dependants) Act 1975 if insufficient provision is made it is possible for Social Services and the Department of Social Security to challenge the Will. In turn this can result in an unpleasant, unhelpful and costly legal dispute.

4.3 How are Trusts operated?

Trusts are administered by between one and four Trustees who are initially selected by the person creating the Trust. It is usually suggested that there are at least two Trustees in order to minimise the risk of fraud or mismanagement. Also should one Trustee die there is a survivor to appoint a new Trustee. Trustees can be other relatives, friends or professionals like a solicitor. Ideally Trustees should be contemporaries of the son or daughter but finding suitable Trustees is often a real difficulty. You are looking for a mix of personal interest in the welfare of your son or daughter and financial skills.

Professional Trustees can be paid for their time but parents are often wary about how much these fees will deplete the Trust fund. The Trust can meet Trustees' expenses.

Payments are most commonly made by the Trustees to provide things the state does not. It is usual for payments to be made as required and not regularly and as such they are treated as capital rather than income for benefit purposes.

On the eventual death of the primary intended beneficiary of the Trust any remaining assets can be distributed to other named beneficiaries or perhaps donated to a charitable organisation involved in supporting people with learning disabilities according to the terms of the Will or Trust Deed.

Where Trustees include relatives (or others) who may ultimately directly or indirectly benefit from assets held in Trust, when it is wound up, they may be disinclined to spend money. There were examples from discussions with Social Services where Trustees appeared to be looking after their own interests as "remainder men" rather than the interests of the relative with learning disabilities.

Why property is held in Trust

There are several advantages of holding property in a Trust:

- Trustees can deal with all the management and maintenance of the property. Thus if the person with learning disabilities is unable to organise this or do it

themselves or lacks legal capacity the problem of how to arrange maintenance can be solved

- If in addition money is put into Trust over and above the property this can provide a fund to pay for repairs or upgrading the property. The Trustees do not necessarily have to do all the maintenance themselves; they can contract with a local housing association or private agency for this service. Note that the Trust is not a legal entity so contracts are between the Trustees and the other organisation
- If property is held in Trust it does not belong to the occupying person with learning disabilities.

Good practice

The main reasons given by parents for **not** setting up a Trust are:

- Unable to find reliable, suitable Trustees
- Concern that the son or daughter does not have a right to what is held in Trust
- Fear that Trustees will use their (legitimate) discretion to benefit people other than their son or daughter.

In addition where other relatives are the long-term beneficiaries and also Trustees there is a risk no payments will be made. Nevertheless, establishing a Trust is one of the few means of making long-term financial provision in a way which will not affect entitlement to care or welfare benefits. A Trust is also, for the reasons explained, a good vehicle for holding property.

Trust - Too Late

Dee inherited two houses on the death of her parents. She strongly wished to move away from her inherited home and was accommodated temporarily in an inappropriate residential unit. Eventually both houses were sold. The proceeds were put into a Trust by a solicitor, but as this ultimately afforded no protection to Dee's capital as it had not been set up prior to her mother's death, it was eventually wound up. Social Services attempted to assist Dee to purchase another house. There were a series of problems. There was insufficient capital to buy a large enough house in the desired location outright. Values for suitable properties were above shared ownership levels and the need to live with others made shared ownership difficult if not impossible. Possible routes of supplementing capital through housing association or Social Services ran into lengthy legal processes and issues of priority. Reluctantly it was agreed to abandon the option of purchasing in favour of a speedier solution, but this was still a lengthy process because of limited renting options. It is now looking likely that a property leased from the private sector by a housing association and rented to the group may provide the solution.

Lesson: A Discretionary Trust has to be established prior to the death of relatives to be effective.

The following emerged as ways of safeguarding the primary, intended beneficiary and are recommended as good practice:

- Giving a letter to Trustees setting out the settlor's (relative's) wishes and intentions in establishing the Trust. Note however this is not legally binding
- Only appoint Trustees who agree to follow the guidance given in the letter
- Have at least two Trustees
- Have one Trustee who is not a family member
- Give a copy of the Trust Deed and letter to the care manager so this can be put on file and Social Services are aware of the terms and value of the Trust (Social Services staff commented that this seldom happened and suspicion of Social Services often made families reluctant to do this)
- Also give a copy to an independent organisation or advocate involved locally
- Explain the terms of the Trust to the son or daughter if possible
- Involve the son or daughter in the selection of Trustees if possible and make sure they know who they are.

The Lord Family - Trust

Mr Lord is happy to volunteer he is 85 years old. He is also blind. His wife died 13 years ago. He has a son and a daughter both now in their 50s. The daughter lives in a hostel supported by Social Services. She comes home for a weekend every fortnight but Mr Lord regrets he cannot do things like read to her anymore.

His estate including the proceeds of the sale of his house is to be divided equally between his children. A Discretionary Trust will be used to manage his daughter's share. The Trustees are Mr Lord's solicitor and his son. However, on investigation the solicitor who drew up the Will is himself already retired.

Lesson: Try and find Trustees of the prime beneficiaries age if possible.

Trusts - Complexities of Relatives in Dispute

Angela is in her 40s. She has Down's Syndrome and is agoraphobic. As a result she has not left the home for 17 years. Her father was her carer until he died. At this point one of her four sisters and her husband took over the caring role. The property is held in Trust. The Trustees are two of her other sisters who live at some distance. One of the Trustees herself has mental health problems, the other is a carer. The house is in such poor condition that Social Services are concerned for the safety of Angela. The Trustees are unwilling to spend any money on repairs or improvements. They suspect their brother-in-law who lives with Angela will defraud the Trust in some way and there are considerable tensions within the family.

The dilemma for Social Services is that despite poor living conditions Angela is reasonably well supported and it would be devastating for her to have to move. The health of her carer is beginning to suffer and arrangements are felt to be fragile.

Lesson: It may sometimes be better to have an independent Trustee.

There are examples such as the one above where family members appear not to have been a particularly wise choice of Trustee but generally this should be beneficial. Family members should know the person well, are more likely to stay involved over the years and remain committed to their relative.

One question raised by Social Services staff who had clients with a Trust but who appeared to be getting no benefit from the Trust was how they could influence the use of Trust funds.

If the terms of the Trust established in a Will are not known it is possible for any person to obtain a copy of the probated Will of a deceased person either by approaching the local Probate Registry or Somerset House. To seek to get a Trust operated as intended, the next step is to approach the Trustees directly or solicitors who are acting for them to enquire what payments may be approved.

Discretionary Trusts by definition give Trustees discretion including the discretion not to make payments. Provided they do not give actual reasons their decision making cannot be challenged - only moral pressure can be brought to bear. This highlights the necessity to choose Trustees who are likely to act honourably.

Sharing a property held in Trust

A Discretionary Trust will often identify the main beneficiary and then make provision for a “class” to which the son or daughter belongs. It may in addition provide for payments to a charitable organisation likely to be interested in the welfare of people with learning disabilities. On this basis it is acceptable for the property held in Trust to be used to provide accommodation for other people with learning disabilities or even to be given to a relevant charity.

Social Services may raise an objection in principle to sharing a property owned by a Trust (or indeed owned directly by a Social Services client), albeit this is within the scope of the Trust and desirable when someone does not wish to live alone:

“...there is a fundamental incompatibility between private Trust vehicles and Social Services’ responsibilities to treat individuals equally. Trustees of a private Trust have a duty to prefer the interests of the Trust’s beneficiaries, whereas Social Services would not normally enter into an arrangement which gives unequal housing (or other) rights to a group of people. This is particularly complex with people whose learning difficulties may make it very difficult for them to understand the subtleties of such an arrangement and to choose such an option with a full awareness of the implications.

*In practice, we would normally only support a shared arrangement in a house which is in Trust, where the Trustees agree to lease the house to a registered social landlord. This is partly to ensure that adequate housing management arrangements are in place and partly as a way of establishing **equal housing rights for tenants**.”*

(A Service Manager - Learning Disabilities)

The issue of the cost effectiveness to Social Services of the support arrangements leading them to suggest sharing has already been highlighted. The equality of security of tenure - housing rights - is the second issue that may impact on arrangements.

It may be possible for Trustees to rent the property held by the trust to the beneficiary (and indeed others who would also fall in the class of beneficiaries) and for the beneficiary to claim Housing Benefit. This provides a mechanism to generate an income for the Trust and thus an ongoing source of funds to pay for management and maintenance and services eligible for Transitional Housing Benefit. This possibility is covered in Statutory Instrument No 3257. (The Housing Benefit (General) Amendment (No 2) Regulations 1998.

These regulations first explain that where a trust rents a property to a beneficiary the rent will not be eligible for Housing Benefit. (3(1) e). However this is qualified by saying this restriction *"shall not apply in a case where the person satisfies the appropriate authority that the liability was not intended to be a means of taking advantage of the Housing Benefit scheme"*.

In practice it appears Housing Benefit is being paid where it is demonstrably the case that the trust arrangements were established for sound reasons regardless of Housing Benefit considerations but this cannot of course be guaranteed.

The following outlines of parents using Discretionary Trust are representative of families who got in touch. They describe typical arrangements and illustrate some of the issues mentioned.

Mark - Trustees Managing Care

On the death of Mark's parent who had been his carer, a Trust giving Mark a life interest in the family home came into effect. The Trustees are an uncle and two cousins. Two carers (a husband and wife) were selected by the Trustees to live in the house and provide support. This includes providing meals, housekeeping and assisting with managing money and making appointments.

The carers live rent-free and are paid by Social Services for the direct support element of the care package. A relative of the carers sometimes provides backup support when the carers are away for an extended period.

The Care Manager summarises the advantages and disadvantages like this.

Benefits:

- ☐ Mark has been able to remain in the family home. Minimum disruption to his life at the time of his fathers death. Domestic chores like shopping, cooking and cleaning are done
- ☐ Companionship
- ☐ Low cost care package to Social Services
- ☐ Responsibility for managing and appointing carers, largely passed to Trustees

Disadvantages:

- ❑ As he does not own the property he has less direct control and could not easily sell to move into other accommodation should he wish to
- ❑ The arrangements, although comfortable, has not provided much opportunity for personal development or an increase in skills

Lesson: There are advantages and disadvantages for each party.

Robert - Living Independently with Low Level Support

Robert is an only child with no close relatives. He lived with his mother and on her death the property was put into Trust. Robert has continued to live there ever since. Robert is relatively able and articulate. He can make clear what his wishes are. He can cook, clean and do most domestic jobs, indeed for the last few years of his mother's life while she was ill, he bore an amount of responsibility for caring for her. His disability shows itself more in social behaviour and he tends to be obsessive and reclusive.

His support is based on a few hours a week of home care provided by Social Services, intermittent visits from a social worker and some support from a niece.

Given his ability to cope on his own, there was no serious question of Robert going into residential care. He simply doesn't need it although he is somewhat isolated and is felt to have become even more reclusive since there is no pressure to engage with the outside world. He is in a familiar place in a familiar locality. He is well established and known in the neighbourhood and he can call on certain neighbours in an emergency. His own home means he can keep his models, pictures and all the things that matter to him. His home, the furnishings and possessions in it represent his life and his history.

Robert would quite like to share his house with someone else but this would have to be on his precise terms. It seems unlikely that what Robert would demand would be terribly attractive to any potential sharer although financially it would help. (But see comments above about Housing Benefit and beneficiaries).

One of the concerns for the future is maintenance. The house is beginning to show some signs of deterioration. There are two issues. First, who arranges maintenance and second who pays for it? "*At the moment we lurch along, everyone hopes someone else will do it*". The social worker fulfils the role of an intermediary between Robert and the solicitor who administers the Trust but it is not clear to Social Services what level of funds are held in Trust and whether they will meet future maintenance and major repair needs as they arise.

Lesson: It helps if Social Services know the terms of a Trust, if there is additional funding for maintenance and Trustees prepared to organise this - or an arrangement with a maintenance service provider.

Paul - Discretionary Trusts Can Be Flexible and Allow Choice

Paul was unknown to Social Services until neighbours alerted the local authority to the difficulties his increasingly frail relatives were having coping. He had never been to school. Eventually his only surviving relative, an aunt, moved into residential care. The family home was a very large, rather unsuitable house. The Trustees agreed to free sufficient funds to buy a small flat - an ex-right to buy property.

Lesson: Even if the plan is that the family home will provide accommodation a Discretionary Trust will allow it to be sold and a different property purchased.

One of the matters that better-off families may want to consider is tax. This is where specialist knowledge is required but the box below provides a basic guide to some of the principles that currently apply.

TAX AND DISCRETIONARY TRUSTS

This is a flexible Trust, which does not pass any value to the beneficiary. Under a Discretionary Trust, the Trustees can exercise their discretion as to the distribution of income and capital amongst the potential beneficiaries. The Trust Deed will define who the potential beneficiaries are, and the extent to which the Trustees can exercise their discretion. Up to £234,000 can be put into Trusts tax-free and thereafter inheritance tax is paid during the donor's lifetime on the excess at 20%.

Excess means the difference between the sum put into Trust - say £300,000 and £234,000 i.e. £66,000 in this example. If there are assets worth more than £234,000 it is worth considering separate Trusts. So for example if a husband and wife jointly own a property worth £400,000 as tenants in common two Trusts of £200,000 each would avoid tax on a chargeable transfer.

Inheritance tax may be paid by either the donor or the Trust.

Every ten years the assets in a Discretionary Trust must be valued and inheritance tax paid, currently at the rate of 6% on the excess of the value over the current nil rate band (presently £234,000). There may also be a charge where capital (as opposed to income) is distributed to beneficiaries.

Income and capital gains arising in the Trust will be taxable at 34%. This tax arises on income or capital gains from trading and investment **not** on the appreciation in value of the property. Upon distribution to beneficiaries this will form a tax credit. It may be possible for a beneficiary to recover some of the tax if they are dependent on benefits. An annual tax return is required for the Trust. If the Trust only holds freehold/leasehold property on which no rental income arises then a nil return can be filed keeping running costs to a minimum.

Professional advice must be sought when setting up the Trust.

4.4 Evaluation of Trust Route

Putting Property in Trust	
Advantages	Disadvantages
Social Services perspective <ul style="list-style-type: none"> ❑ A Trust is a resource - saves accommodation cost element ❑ Provides accommodation element of a care package. Can possibly extend to property maintenance as well ❑ Trustees can administer property and deal with these aspects of care package - possibly even oversee the whole care package. 	<ul style="list-style-type: none"> ❑ Parents may want long-term guarantees from Social Services about care that they cannot give ❑ Terms of Trust must be clear or Trustees may fail to act when they legitimately could help the beneficiary ❑ A risk that if the beneficiary is required to share (to achieve economies or reduce isolation) this will not work out. Also they may be worried that the son/daughter may seek to dominate “their home”. Sharers may not all get equal treatment or have equal status, particularly with regard to security ❑ Property may not be in good condition or may be considered unsuitable by Social Services ❑ Concerns about Trustees’ ability to manage and maintain property, also how maintenance will be funded if no additional money is placed in the Trust.
Family perspective <ul style="list-style-type: none"> ❑ A way of making long-term financial provision and securing housing in a way that does not compromise benefit entitlements or rights to social care ❑ Being able to plan ahead and know at least the housing element is fairly certain ❑ Provides a means of managing some crucial financial affairs if legal capacity or ability to manage money is in doubt ❑ It can provide a maintenance fund ❑ Discretionary Trust implies flexibility so if circumstances alter funds can still be used to give some choice and control. 	<ul style="list-style-type: none"> ❑ A Discretionary Trust does not give the beneficiary an absolute right to capital or income ❑ Dependent on Trustees acting in accordance with settlor's wishes and the interests of beneficiary ❑ May be difficult to find suitable Trustees of the right age ❑ Professional fees reduce value of fund. ❑ Certainly around property is conditional on support package being available.

<p>Individuals perspective</p> <ul style="list-style-type: none"> ❑ Can remain in their family home - no trauma of moving ❑ Stay in familiar area, environment, with own furniture and possessions ❑ Stay near friends ❑ Community/neighbours may provide some assistance and know the person. People to call on in an emergency or even support ❑ The Trust, including the property represents an asset that could be used to continue to exercise some control and choice over where the person lives in future if circumstances change ❑ Trustees can organise maintenance. 	<ul style="list-style-type: none"> ❑ If left alone may be lonely (but not everyone is and not everyone wants to share) ❑ If do want to share with others there may be difficulties with Social Services over legal status and security ❑ Difficult to maintain property - particularly unexpected major repairs - if insufficient in Trust for maintenance ❑ Not eligible for Housing Benefit (but less necessary).
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4.5 Inheritance

Instead of property being put in to Trust it is possible for someone with learning disabilities to inherit property directly. This is true even if the son or daughter has severe learning disabilities and judged to lack legal capacity. This is because no contract is involved.

The advantages of direct inheritance are that:

- It avoids the trouble and expense of having to set up a Trust
- You do not have to find Trustees
- There is no doubt as to how discretion will be exercised by Trustees.

The disadvantages and risks are however weighty:

- The son or daughter may be unable to either carry out management and maintenance themselves or legally contract with anyone else if legal capacity is in doubt
- Unless there are other funds held in Trust, paying for major repairs may be problematic
- The property is more vulnerable to claims from Social Services who may seek to levy charges for services which are ultimately repaid through the proceeds of sale of the property particularly if the time comes when the person enters residential care. A Trust protects the property more effectively because once property is put into a Discretionary Trust it no longer belongs to either the settlor or the beneficiary.

Two Sisters - Sharing an Inherited Property - Where it works

Jane and Jo are in their fifties. They inherited the family home on the death of their mother. They have other sisters and brothers but they don't live in the locality. The two sisters have some ability to read and write. They use day centre services from time to time but either they decide to leave or because of their behaviour they are asked to leave.

Initially when they inherited the property their social worker thought they would need a relatively high level of support and a worker was allocated to the sisters. They promptly rejected any such help. The staff involved expected a crisis but the crisis never came. The sisters were clearly able to do more than was thought. In addition, some neighbours are a *“great support... tactful in the way they handle things....”*

The sisters are very interested in crafts and gardening and have a lot of equipment that would never fit into a small flat let alone a residential care home, and one of the advantages of staying where they are is they can continue doing what they like. The role of neighbours is also important. Some are quite supportive although the behaviour of the sisters does also lead to complaints from neighbours from time to time about noise and swearing. As the property is located in a relatively quiet residential area, in fact it is clear to Social Services that being home owners makes them less vulnerable to attack from neighbouring children than they would be on an estate in the same borough.

Financially the two sisters sharing works out well. The household income is reasonable as both are on the middle rate of DLA. The sisters are able to meet all their day to day living expenses from their income even though they don't necessarily budget particularly well. The problems envisaged are when more substantial things go wrong with the property *“I really don't know what we will do when they need major repairs.”* The rest of the family is not in a financial position to help and the property is showing signs of deterioration for example the windows and window frames.

The second concern for the future is what will happen as they age and one or other of the sisters develops health problems. At the moment they are able to support each other, they have a symbiotic relationship. Their personalities would not make them easy companions in residential care nor would a move allow them to continue their interests. If for any reasons the sisters had to split up then Social Services would be willing to provide care and support in the home for the remaining sister, provided it was acceptable to them.

Lesson: Continuing to live in a neighbourhood where you are known can be a real plus and sometimes the community does “care”. The surviving adult with learning disabilities may learn new skills when parental support reduces.

If parents die without a Will or making clear who inherits a property they die “intestate” and the general law will apply. If the parents estate is more than a few thousand pounds then:

- If legal capacity is in doubt the Court of Protection will step in and appoint a receiver to administer the assets. The receiver's decisions may well not accord with what the parents would wish
- the State in the form of the Department of Social Services or local authority may make a claim under the Inheritance (Provision for Family and Dependents) Act 1975.

Brother and sister - when it doesn't work out

A daughter with learning disabilities and her brother inherited the family property. Valued at £150,000 the brother persuaded the sister to part with her half for the princely sum of £4,000! She was subsequently offered the tenancy of a council flat and re-housed. She believes she is rich and despite the willingness of Social Services to support her in getting a fairer deal she is unwilling to fall out with her only relative.

Lesson: Parents cannot necessarily rely on relatives. A Trust with an independent Trustee might have protected the daughter better.

Half-share with brother - when it doesn't work as planned

Frank was left a half share in a property following the death of his mother. He had lived there with her and his brother and the house was left to both of them. His mother saw this as a way of ensuring that the brother continued to care for Frank. The brother was not able to do this (having some health needs of his own) and eventually a deal was struck enabling him to purchase Frank's share of the property and Frank to move to a local group home.

Lesson: Parents must discuss their plans with family members and not assume too much.

Property left to two sisters - inheritance that cannot be used

Carol entered residential care following the death of her mother. The property where she and her mother had lived was left jointly to her sister and Carol. The sister lives in South Africa and has been there for many years. She refused to sell the property. It had been let originally but was then left empty. A local money management agency were addressing this on two levels:

1. that Carol was being deprived of income because the property was lying empty and not being sold
2. the County Council was being deprived of income for the same reasons

Carol has since died.

Lesson: Don't assume relatives will agree.

It is common when there are other brothers and sisters for an individual to inherit part of an estate rather than the whole of the family property or assets. In this case it may be necessary to sell the property rather than use it directly. When the son or daughter is left with insufficient capital to buy a suitable property outright one useful option is shared ownership.

This does not mean sharing in the sense of shared living. The ownership only is shared with another landlord - usually a housing association. Under the shared ownership programme offered by some RSL's it is possible to buy anywhere between one quarter and three-quarters of the equity. The RSL owns the balancing part, which it rents to the occupier who is a "shared owner". This part-buy, part-rent arrangement allows someone with say £25,000 to acquire a half share in a property with an open market value of £50,000. This possibility is explained in detail in "Ownership Options" (King, National Housing Federation 1996).

5 GIFT AND SALE

5.1 Introduction

One approach to securing the family property for a relative has been to give it to a national charity. This approach has also been used by older people who have given their present home to an organisation like Help the Aged in return for some guarantee of maintenance and care. Sometimes families have willed property to Mencap and at present the Mencap offshoot, Golden Lane Housing, is used as a vehicle to accept gifts of property or manage and maintain them.

In this Chapter we look at how these schemes work and how they might be developed in conjunction with social or private landlords.

An alternative to giving the property away is to sell it, usually to a social landlord. Again there is scope for this approach and these possibilities are considered in the latter part of the Chapter.

5.2 Help the Aged - Gifted Housing Plan

Help the Aged is a national charity that supports and represents older people. They have offered a Gifted Housing scheme for a number of years. The basic arrangement is that a property is given to Help the Aged by an elderly person, usually a single person with no close relatives. In return Help the Aged:

- Carry out any immediate repairs or adaptation required
- Install an emergency alarm call system and connect to a monitoring service
- Provide a limited support service
- Maintain the property and any gardens
- Insure the property.

The donor can continue to live in the property as long as it remains suitable but they can also access Help the Aged's specialist housing and care facilities. This is not a plan designed for older people with learning disabilities. However, the experience of Help the Aged is useful in evaluating this approach.

In the initial years of the scheme Help the Aged did not always get the sums right. The cost of supporting and maintaining the person came to more than the value of the property when it was eventually sold. The financial viability depends on:

- The age and health of the donor
- The value of the property
- The cost of the initial repairs.

As a result the Gifted Housing Plan is currently restricted to people over the age of 70 and higher value properties. The key risks for Help the Aged - having done a realistic financial appraisal - is that the property values will fall rather than rise and Help the Aged could not provide the subsidised care services within the value of the property.

There is a legal agreement between the donor and Help the Aged on the package of services to be provided and what each party will be responsible for. The process follows this pattern:

- Extensive initial discussions - donors must be convinced the scheme provides value for money
- The property is surveyed and valued by Help the Aged - who meets these and subsequent legal costs
- A donation agreement is drafted and discussed
- When finalised this is signed
- The property is conveyed to Help the Aged.

Help the Aged say:

- Receipt of Income Support has not been a problem - the scheme has not been viewed as a deliberate deprivation of assets
- Help the Aged is not registered under the Financial Services Act for this activity and has not felt the necessity to register
- They have **not** had questions about the arrangement described conflicting with their charitable status

The Help the Aged scheme illustrates the approach and principles but as noted it is not specifically for people with learning disabilities. In the next section we look at examples which are.

5.3 Gifts to a Charity

Three families offered contrasting examples of setting up or using a charity and gifts specifically to offer shared housing for people where one of the sharers was to be a son or daughter.

In the first case the family had made a large but unconditional donation to a local Mencap Society on the assumption that the home acquired, with a couple of other families, would become their adult child's permanent home and that the Society would continue to look after all the residents. This arrangement has worked satisfactorily but requires a degree of faith.

In the second case three families had acquired a property, which was then donated to Golden Lane to manage and maintain it.

National Mencap have set up "National Trustees for the Mentally Handicapped Ltd" to administer individual Discretionary Trusts. This is based on a standard Trust and single set of Trustees rather than different groups of Trustees such as parents, brothers, sisters or other family members for each Trust. National Trustees for the Mentally Handicapped Ltd (NTMHL) is primarily intended to manage cash put into Trust for the beneficiaries. However, where property is part of the Trust assets NTMH have entered into arrangements with Golden Lane for management and maintenance services.

Donations to National Mencap (which could include property) in the past have sometimes been linked to a visiting scheme run by Mencap using volunteers. At present this scheme is suspended partly because of the difficulty in finding and managing a scheme dependent on volunteers.

Golden Lane discourages outright gifts direct to them where the intention is that the family property provides a continuing home. They suggest instead the property is put into Trust and Golden Lane enter into an arrangement with the Trustees to provide the necessary property management and maintenance services. One reason is the difficulty of entering into a contract with families. Also it may not be realistic to guarantee the gifted home will continue to be the permanent residence and/ or that support will be provided. As will become clear when we examine what level of support can be afforded in Chapter 6, the value of the property, because the cost of care is high, may not go very far in meeting the revenue costs over the individual's expected life.

In the third case the family planned to donate a substantial property capable of accommodating a number of people to a charity of which the father was a Trustee. Their daughter has autistic spectrum disorder and can be difficult to support. As a consequence in order to give some security to their daughter, the donation was on condition the charity cared for their daughter permanently. This was not acceptable to the Charity Commissioners and the donation of the property has not gone ahead.

There are at least two problems that may prevent this type of arrangement. Charity Commissioners are unhappy about charities which are in effect run for a small group of people, members of a family, employees of a company for example, and tax relief may not be allowed in such cases. In this case the terms of the Trust may have been too restrictive. A "Charity" must be seen to serve some public purpose - to benefit the wider community. This was possibly too "private".

The options in situations like this include:

- i. To donate property (or other assets) without conditions taking a risk but in the belief the charity will act honourably - the first case
- ii. Gift to an organisation but having a contract binding the organisation to continue to care for life (see below). This is a disposal for capital gains tax and may therefore give rise to a capital gains tax liability on the donor. Also as explained in discussing Mencap and Golden Lane it may be difficult for the organisation to accept the terms of a conditional contract
- iii. Grant a tenancy to the son/daughter and then gift the property to the charity subject to the tenancy.

5.4 Housing Associations as Partners

Housing associations are potentially good partners for parents in considering gifting property. Characteristics are:

- Their business is managing and maintaining property - they have the skills, knowledge
- Social landlords
- Not-for-profit organisations
- Heavily regulated by the Housing Corporation and other agencies
- Some specialise in, or have knowledge of learning disabilities
- A few could provide care and support services as well as being a landlord
- There are a large number to choose from
- It may be possible for the association to get grants to improve or adapt properties if necessary.

Despite this the number of instances where parents have successfully gifted property to associations appears surprisingly few. Discussions with Advance Housing & Support Ltd. and New Era Housing Association revealed that even these two leading specialists had seldom worked with parents in this way.

It would undoubtedly assist families if there were some choice of experienced, trustworthy landlords they could confidently arrange to leave property to. The housing associations interviewed identified the factors influencing willingness to take properties:

- i. Geographical location - properties are only of interest if they are located near existing stock so an economic management and maintenance (and possibly care service) can be provided. A critical mass of around ten to twelve properties reasonably close together is a guide. A general needs association might however take a different view and be prepared to take one-off properties in areas where it had other stock
- ii. An exit strategy - it would have to be understood that the property could be sold if it was no longer appropriate or the best alternative for the son or daughter. One of those interviewed suggested, in order to safeguard the resident, that a process for taking a sales decision be agreed. This could be based on either an independent advocate being satisfied or that a group such as required for a Social Services “case conference”, would have to be convened and agree
- iii. Property condition - this should be reasonable. Reasonableness could be assessed in terms of health and safety criteria relevant to the individual, along with financial tests. This could be judged in terms of:
 - Value of asset and life expectancy using the financial model developed for this project
 - Whether Housing Benefit would meet the anticipated cost of maintenance
- iv. Capacity to raise private finance - if the property was conveyed to the association so it became an asset in the accounts the association could theoretically use the asset value to raise additional private finance for their work which could include repair of property.

- v. A process where the key parties agree to the gift - this would include:
 - Agreement by son or daughter - as far as practicable the association would want the son or daughter to understand and agree what is proposed
 - Where there are other relatives the association would need to be reassured that the gift will not be disputed
 - Care and support package - in principle agreement with Social Services to the arrangements proposed and that, if required, a care and support package will be provided to meet the assessed needs.
- vi. Minimal fees - associations are fearful of protracted discussions and legal wrangling over the terms of the gift of a single property. They see this as potentially expensive (and dispiriting for all parties) in staff time and legal fees. The key requirement is that the family can prove clear title to the property. If there was any outstanding mortgage on the property this should be cleared.

In this study we focus on the direct use of the family home. It is possible for families, if it can be afforded, to provide the money for a different property to be purchased by an RSL (or other landlord). The considerations are much the same as described above. An example of this approach follows and Appendix A contains a model form of agreement.

One hurdle to gifting (or sale) to allow a son or daughter to continue to live in the family home which arose repeatedly in examples was the problem of Social Services providing affordable support to a single individual. Very often sharing would be suggested but families often (understandably) want their relative to be “in charge” i.e. to have absolute security of tenure. Social Services and the other agencies involved like the landlord and care provider, may find this unacceptable, insisting all vulnerable residents are of equal status. More often than not an impasse is reached and the scheme does not go ahead. Occasionally with good will it can. Joanna’s story, which follows, illustrates one success story of parents making a gift to an RSL where the property will be shared.

Joanna

Mr & Mrs L first made contact with Housing Options five years ago when they were creating a Trust for their daughter Joanna. She will shortly move into her own home. It has taken all this time.

Joanna is relatively able. She gets about 5 hours of support a week and at present has a job at Sainsburys. The family was willing to buy a house for Joanna large enough for her to share with one or two friends. When the family first tried to establish a long term plan they initially found it difficult to get the assistance they were looking for from the local Social Services Department which at the time was reluctant to use the independent sector.

The parents made contact with Downland Housing Association and met the Chief Executive who agreed to help. A series of meetings involving Social Services, Downland and the family eventually culminated in:

- Legal advice that “... the Council cannot be party to any arrangements for the supply and running of the house provided through monies made available by Mr & Mrs L...” thus ruling the local authority out as the direct provider
- Acceptance in principle by Social Services that they would support three people, including Joanna, sharing a property
- A formal invitation from Social Services to Downland to provide a community based service for three people either managing the property, or providing a support service or both.

Downland responded to this and are presently seeking a suitable property around £150,000. The five-year delay since acquiring a property was first proposed means that house prices are now 30-40% higher. Buying gives more opportunity to select a house in the right place. For Joanna this means an ordinary house, in her hometown, near to her work. Downland will contract with a private care provider for a support service so property functions are clearly separated from support.

In the early stages a central concern, discussed on a number occasions, was the extent to which Downland could give an absolute guarantee to look after Joanna whatever happened. It has been accepted, as Downland is a registered social landlord, the Association will always try and do its best for Joanna but that future circumstances cannot be known. Safeguards for Joanna include:

- Granting a tenancy thus giving the same legal rights and protection as any other tenant
- a formal agreement setting out the intentions of the family in funding the purchase of a property and the obligations of Downland
- An undertaking to consult Mr & Mrs L or other close relatives as changes in accommodation or support are required.

Key provisions of the agreement are summarised below. It is not however a legally enforceable contract.

Form of Agreement

- Mr & Mrs L will fund the purchase of a property for their daughter and others with learning disabilities.
- The Association agrees to provide suitable accommodation for Joanna’s lifetime.
- The Association undertakes to consult parents on any changes to accommodation or care during their lifetime and subsequently surviving relatives who are identified in the agreement.
- It is explicitly acknowledged that circumstances may arise where the initial property no longer serves the best interests of Joanna and the Association agrees to use its “best endeavours” to provide better alternatives.
- It is envisaged that Joanna will share with one or two other people. The Association agrees to find other residents and be responsible for their care and support.
- The Association is responsible for management, maintenance, improvements, major repairs and furnishings and appliances.

5.5 Social Landlords and Charity Law

As explained, housing associations can be good partners for families. In order to ensure there are no legal difficulties in registered, charitable associations receiving conditional gifts of property specific legal advice was obtained.

“A charity can accept a gift of a property on terms that it allows a named person to live there either for life or for some other period. Tax legislation specifically envisages this by reducing the tax exemptions given for instance under inheritance tax for such schemes. In former times wealthy persons often made settlements of a property giving a relative a life interest with the reversion going to a charity.

The charity has to assess the terms proposed under the gift (including gifts made by Will) to ensure that the benefit it will obtain (and the estimate of when it will obtain it) outweighs the costs of accepting any obligations contained in the terms of the gift. Once the charity has accepted the gift with the condition, the condition must be fulfilled whether or not the subject matter of the gift is adequate for the purpose.

Such terms might relate to obligations to repair and insure, pay outgoings and in the case of a person requiring support which the charity was required to provide, the cost of that support.

In the case of parents wanting to gift the family home immediately with a proviso that they and their sons or daughters be allowed to live there until the death of the last survivor of them (or in special needs cases the property becomes unsuitable) the charity has to go through the assessment process outlined above.

The charity can of course negotiate and before accepting the gift, it should obtain a valuation and benefit from legal advice on the precise terms of that gift. The valuation and the advice should be documented.”

So although these appear to have been doubts, a charitable gift can be subject to a condition precedent i.e. the gift only takes place if the specified event occurs. A gift can also be subject to a condition subsequent i.e. the gift is subject to a condition being met after the gift has been given.

Any condition attached to the gift must not involve a breach of trust, or be a condition, which is outside the charitable objects of the organisation concerned.

Legal advice quoted above refers to the requirement to assess the terms of the gift to ensure the benefits outweigh the costs. This requires a complex calculation and assumptions. Therefore, in order to assist charitable organisations and families considering this possibility we have created a financial model to do this. This is explained in the next chapter. It will become apparent that the value of a property - its equity - can be used to fund maintenance and possibly even an element of support. However, if care and support needs are relatively high the asset may be used up very quickly. This means that the Housing Association (or other charity) may be reluctant to accept the gift because, as explained above, *“the condition must be fulfilled whether or not the subject matter of the gift is adequate for the purpose.”*

5.6 Sale and Lease of Properties

An alternative to giving away the family home is to sell it or lease it to someone for a period. This might allow a son or daughter to continue to live at home with the proceeds of sale being used for some other purpose.

Sale may be preferred because:

- The financial modelling shows a large unused, capital surplus, which the family may wish to realise sooner rather than later
- Other members of the family are opposed to a gift.

Selling may not be as straightforward as it initially appears:

- Sale depends on finding a willing buyer - there is a very limited market
- A tenanted property is only worth about half that of a vacant property
- The buyer will need to be willing to take on the obligation to support the son or daughter and borrow to acquire the house
- The purchasing organisation may need re-assurance that a care package will be provided yet Social Services may find it difficult to give sufficient guarantees
- There may be considerable negotiation around the obligations of the purchasing organisation and rights of the son or daughter - who will probably become a tenant. The landlord may for example want the flexibility to move the son or daughter and re-house them if circumstances change while the family may not wish to compromise
- There may be a difference of view about the assumptions to make in the financial modelling i.e. how much property price inflation is to be expected where the proposal is to discount the sale price so that management, maintenance and other costs are covered
- It is difficult to arrange the sale of the property while it remains the family home.

Selling and Re-Provision through an RSL

Michael inherited a semi-detached house on the death of his mother. He is an example of someone who was unknown to Social Services until quite recently. He has never received any benefits but with the support of the Shaw Trust is now working for a large supermarket. His property was in very poor condition although structurally sound in an area where property prices have risen markedly.

In his case Michael definitely did **not** want to stay in the family home which reminded him of an unhappy past. The property is to be bought by a local housing association at a discount, which will enable them to acquire a different, more suitable flat for Michael. His old house will be re-furnished by the association for subsequent letting.

The advantages, if it can be arranged, of selling to an organisation which takes on the obligation of housing and possibly supporting a son or daughter are:

- the family get a capital sum which can be used to increase the Trust fund for example
- When ownership transfers to another landlord the landlord can then let the property. In turn this means Housing Benefit may be claimed and management and maintenance becomes the landlord's responsibility
- if the purchaser is an RSL it may be possible to get Social Housing Grant to adapt, improve or convert the property.

Alison's story illustrates this route and many of the principles involved.

Alison - working with a registered social landlord, sale of a lease and Discretionary Trust - living independently in parents' home while parents move out

Alison is 36. Born with Down's Syndrome, from the outset her parents "were determined that she should have as an ordinary a life as possible." Alison progressed through various schools and work preparation programmes until she got a job as a domestic assistant in a residential care home in 1986.

At a very early stage (1987) when discussions first began Alison said "that whatever happened she wanted to live at home, to be able to keep her job and to be close to her church, the shops she used and, above all, her friends and the neighbours she knew."

Alison and her parents considered a number of possibilities for when she left home including Camphill and a small Social Services home.

One idea was that the family home be given to Social Services and become part of a cluster scheme. The Director of Social Services perceptively advised against this "because models of provision change". Another possibility was gifting to Mencap - for the reasons already set out in this chapter Mencap "explained that under the Charity Act Mencap could not guarantee Alison a place". After a number of blind alleys a chance meeting eventually led to the property being sold to a housing association on a lease for 21 years.

The elements are:

- i. **A Discretionary Trust** was created under which the family property "was to go into the settlement when we were ready to move out or on our deaths under the terms of our Will". The Trustees were two of Alison's brothers, a college tutor and a fourth independent person with a housing background. The two brothers are also beneficiaries and Mencap is the residual beneficiary
- ii. **Training** - a programme of 25 weeks independent living skills training was arranged in the family home. The Cadbury Trust funded this. It covered cooking, shopping, budgeting, cleaning, laundry, and ironing. At the conclusion Alison made her own breakfast once a week and cooked a family meal once a week

- iii. **Lease** - Alison did not want to live alone but to share with two other people. The house needed substantial alterations costing £25,000. Neither the parents nor Trust could afford this. If the association owned the house they could apply to the Housing Corporation for Social Housing Grant to make the necessary changes. To achieve this the property was transferred to the Trust and then leased to the association for 21 years.

The association paid the Trust £20,000, about a third of the open market value of the house. The Trustees retain the Deeds of the property.

“This arrangement was likely to give Alison less security and was one of the most difficult parts of the lease to finalise. Enormously complex issues arose, not only over Alison’s security of tenure and the position of other tenants but also over the responsibility for her care and what would happen at the expiry of the lease.”

The works were duly carried out over a period of 5 months with the family still in residence so Alison did not have to move out then move back to an altered house alone

- iv. **Care** - Social Services would not commit themselves to a care package in advance of the home being set up. As a fall back the lease contains a provision to the effect that the association “will use its best endeavours” to secure suitable care and support for the residents.

To enable the parents to move out Community Service Volunteers were recruited to support the tenants during the first two years. Their term of service was only six months so there was a succession of volunteers of varying ability. As this was unsettling for the tenants, the housing association was eventually able to find the funds to employ a project leader specifically for Cherry Road. She provides three hours support a day.

This arrangement works much better. She helps with a range of practical tasks, motivates personal and house care, helps to build relationships and resolve difficulties between residents and provides emergency cover adding to security. The group no longer needs anyone to sleep in at night. The emphasis is on intensive training in living skills.

One of the other residents was a school friend of Alison’s, the third was awaiting a move from a Social Services hostel and moved in supported by the Social Services Outreach Team until, after six months her own separate flat was ready. In her place came Teresa whose mother had died. She needed a homely but independent care place. Funding is based on Social Services support for Alison and one of the other residents combined with Supported Housing Management Grant paid to the association. The third resident gets no support from Social Services.

Her mother sums up the outcome like this:

“Alison is delighted to be living independently with her friends. The independence has given maturity to all three tenants... people with learning disabilities can live their own lives happily and safely provided they have security.”

Lesson: Some of the routes to using parental property can usefully be combined - working with a social landlord, lease and a Trust.

Alison wrote her own story in response to questions with the aid of a word processor and a spell checker.

Alison's own story

My parents thought I needed to live independently before they got very old and died.

I did stay at Camphill Rudolf Steiner House sometimes. They did not have a TV and I would miss my job, friends, my church and church friends, won't see much of my brothers, parents for tea, lunch and Oxfam lunch. I wanted to carry on living at Cherry Road where I was brought up.

The planning lasted 5 years. We had meetings with Bob Clayton at Calabria Housing about living skills and the past. Dick Hornby (he is the Director of Calabria Housing) looked round the house to decide about the alterations and the Trust. William, Michael and John are my Trustees. I was excited.

I needed training in living skills. My parents helped me first. Then Pamela Jones from the local college of further education came to do cooking, budgeting and ironing. The Cadbury Trust paid for this in February 1994. In 1995 before the building started, Cally and John arranged more training for me and other people at college. First day was the taster day, shopped, cooked then Peter Frail's course.

Mr Hutton the architect made plans for the house. We needed a bigger kitchen and laundry. December 1995 in the snow the building started. Mr Hartwright and his merry men came every day at 8.00 in the morning. We gave them coffee. It was noisy and dusty. They changed everything. We moved round where we ate out meals. One was in the sitting room on the tray and on the card table in the kitchen with the Mencap president. I liked the new kitchen best but the bathroom was terrible because the tank overflowed and the water boiled. It was the electrician's fault.

While this was going on, Patience and I went with Nora to a furniture shop for Patience and another tenant's bedroom and the little bedroom. Cally Bilson helped us with the curtains. Liane Walker helped us with the carpets. Chris Garvey took us to Sedgley to buy electric goods. Calabria had to pay for it all.

Calabria helped Patience to live at Willow Road and Sue Smith came in June till January. After that Teresa Nash moved in to live with us in the summer of 1997. We are all tenants of Calabria Housing Association. We all do like to live independently. We did not like changes of volunteers and losing Val but she comes round to see us and Lucy came last Christmas. It is now better with a dedicated support worker, Ada Roston. She comes in and out nearly every day.

When my Mum and Dad moved out I was excited and I wanted to get my freedom. When the volunteers came, we had to do what we are told still. I felt nervous without mum and dad, but I am OK.

6 EQUITY RELEASE

6.1 Introduction

This chapter explains how the asset value of the property, its equity, can be used to pay for management, maintenance and possibly even an element of support.

The home is likely to be a family's single, biggest asset. Several of the examples already quoted have drawn attention to a key difficulty in continuing to use the family home - how will it be managed and maintained.

In gifting a property to an organisation (or relative) families can swap the capital asset a property represents for:

- An ongoing property management and maintenance service
- A degree of personal support.

This process of turning a capital asset into services is called "equity release".

The organisation receiving the donation has to provide these services for an indeterminate period, possibly up to 50 or 60 years if the son or daughter is quite young. There is a risk that the costs of looking after the property and giving support will exceed the value of the home when it is eventually sold and the organisation gets its money back.

In order to help families work out how much future property maintenance and support their home will buy and organisations assess the financial risk of accepting a donation (and satisfy charitable rules) a financial model has been created to do the calculation.

The model and a user manual can be directly accessed on the Foundation for People with Learning Disabilities' website: www.learningdisabilities.org.uk

In simple terms the model takes the present value of the property as the starting point. It then works out the outgoings to maintain the property and provide any support for a period of years. It allows for the costs to rise over time due to inflation. It also allows for the property to increase in value. As the receiving organisation will in effect (or actually) have to borrow to meet all the outgoings until such time as the property can be sold the model also includes the cost of borrowing to meet the expenditure over the years.

All the assumptions about what things cost and how inflation will go can be varied but as a starting point there are some "default" values which can be used. How these are derived is explained in the manual. In the following section a possible set of assumptions are set out. Then the model is applied to an average UK property to demonstrate how far the capital in a gifted property can go in meeting longer-term revenue costs of looking after the property and supporting the person with learning disabilities.

The model can be used to work out what can be afforded from the equity if no rent were charged. This might be relevant where someone is able to work and not entitled

to much if any Housing Benefit or where a Trust owns the property and rent is not eligible for Housing Benefit. Alternatively if a rental income is envisaged when for example an RSL is given the property and the occupants will qualify for Housing Benefit then the additional effect of a rental income can be calculated.

6.2 Assumptions for Model

The model can be used to illustrate a “typical” situation. Calculations depend on the assumptions made. In using the model the assumptions can be varied and set according to circumstances and views. The assumptions made here to demonstrate the use of property equity over time are set out in the table below with an explanation of their derivation.

Variable	Rate	Explanation
Borrowing rate	7.5%	The actual long term borrowing rate of a medium sized RSL. At present individuals may obtain variable rate mortgages a little below this rate.
House price inflation	5%	Over the last 16 years house prices have risen by 150% i.e. about 9% per annum. In recent years annual house price inflation has exceeded this being around 13.6% in 1998/99 but this is projected to fall to 8% in 1999/00 and trend down so this more conservative figure has been used.
Retail price index	3%	30 years ago the annual rate of inflation was 6.4%, it is currently around 2%. The annual increase in average earnings was 12.1% 30 years ago but has fallen to 6.2%. Historically earnings increase at a faster rate than the general inflation rate. Some items like management and maintenance costs are largely determined by wages therefore we have taken 3% rather than 2% as the figure to apply to most of the expenditure items.
Average house prices	£100,000	Average UK house price at August 2000 according to land registry figures.
Management and maintenance	£500 each	These are the average figures of the largest RSLs as published by the Housing Corporation.
Insurance	£40	This is on the assumption that the landlord will be an RSL and the property will be incorporated in the block insurance policy.
Furniture	£500	This is an arbitrary figure intended to allow for periodic replacement of furniture, equipment, carpets, curtains and similar items. It is informed by allowances made by housing associations for furnished accommodation.
Major repairs	1% of value per annum	This is similar to the provision the Housing Corporation suggests RSLs make for long-term major repairs like roof or window replacement.

6.3 Model in Practice

The first few tables below reproduces the figures that go into the calculation and the results over a period of 25 years for an average UK property on the above assumptions. In all cases management, maintenance, major repairs, furniture and property insurance are covered. The things that change in subsequent examples are house price inflation and cost of support to illustrate the impact.

Table 1 shows the input table. This example is the starting point and simply shows the assumptions explained above i.e. borrowing at 7.5%; 3% inflation etc, for an average U.K. property valued at £100,000.

The results for an average home using the above default assumptions are set out in table 2. The increase in value of the property more than meets the accumulated costs of looking after the property over 25 years although after about 13 years the residual value of the property i.e. the market value at that time minus the accumulated costs begins to decline. The results of the calculations are shown pictorially in Graph 1. Table 2 and Graph 1 show exactly the same thing in different ways

Table 1

GIFTED EQUITY MODEL				
Expected Life (Years):	25		Borrowing Rate:	7.500%
Initial Equity:	£100,000		House Price Inflation:	5.000%
Set Up Cost:			Set Up Cost Inflation:	3.000%
Insurance Cost:	£40		Insurance Inflation:	3.000%
Maintenance:	£500		Maintenance Inflation:	3.000%
Major Repairs:	£1,000		Major Repairs Inflation:	3.000%
Furniture:	£500		Furniture Inflation:	3.000%
Management:	£500		Management Inflation:	3.000%
Support Cost:			Support Inflation:	3.000%
Other (Description):				
Other Initial Cost:			Other Inflation:	3.000%
Other Start Year:			Rent Inflation	3.000%
Other End Year:			Rent	£0.00

We can change the assumptions to show the results of increasing or decreasing house price inflation, property values and the other variables. Rather than show a large table, for simplicity in the rest of this chapter we show the effect of different assumptions in a graph.

If a modest amount of support is also provided costing £2,500 per annum, enough to provide perhaps an hour of domestic help each day or a support tenant - the picture

changes. Until year 18 the residual value of the equity exceeds costs. Thereafter the picture begins to change and the burden of debt that has accumulated grows to the point where the increase in the capital value of the property is outweighed by the accumulated revenue costs (Graph 2).

Residual Value of Average Property - Property Inflation 5% per annum - No Support

Graph 1

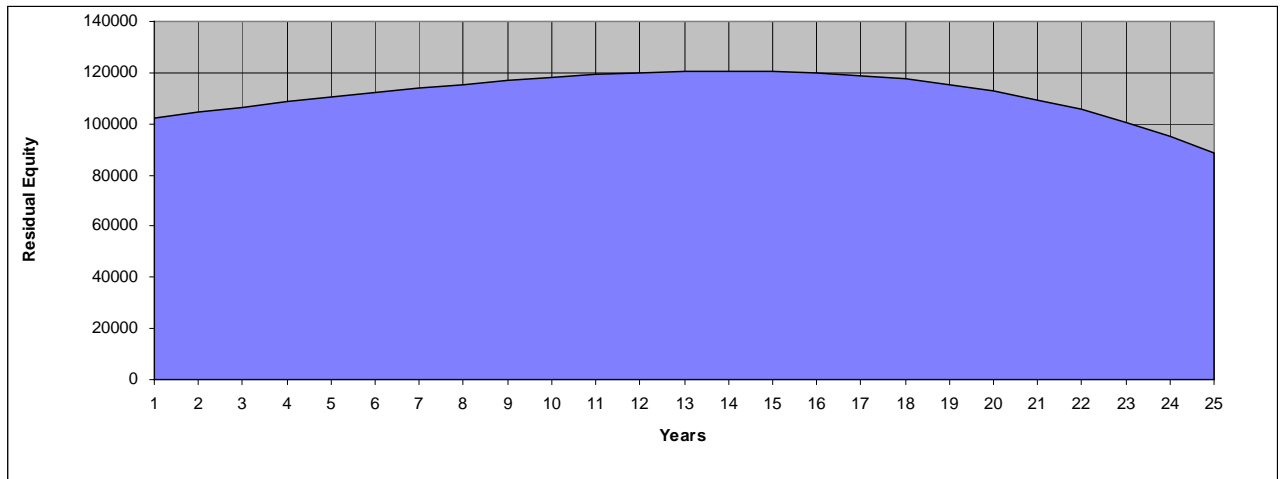
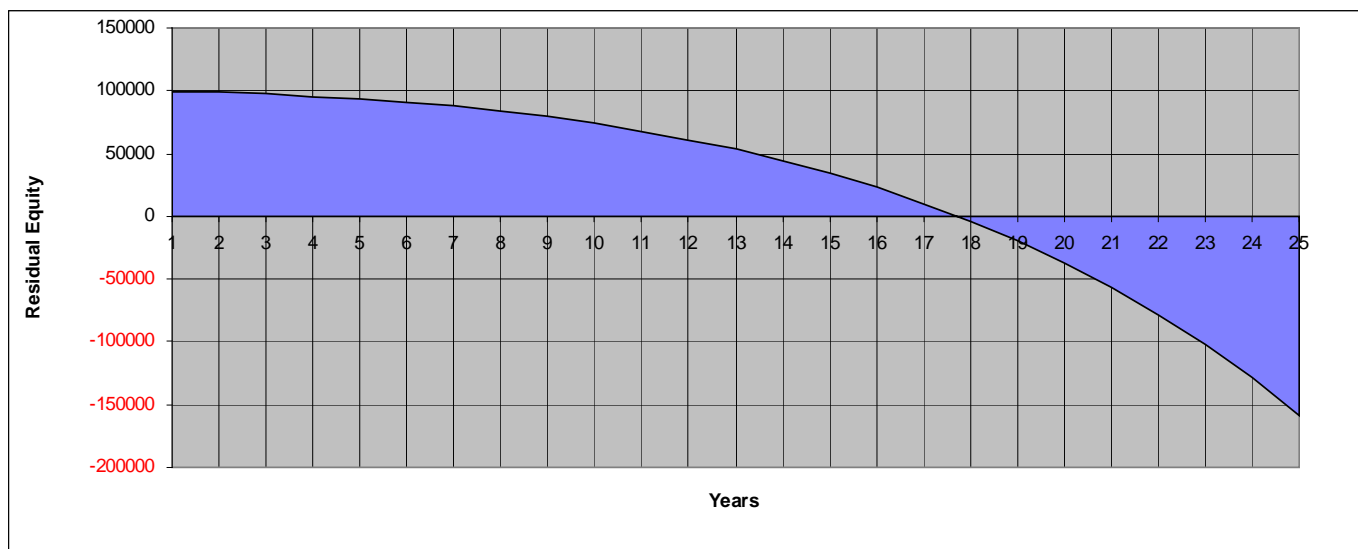


Table 2

GIFTED EQUITY MODEL												
Year	Set Up Cost	Property Insurance	Maint.	Major Repairs	Furniture	Mgt.	Support	Rent	Sum Borrowed	Borrowing Cost	Equity	Residual Value
1	0	41	515	1030	515	515	0	0	2616	196	105000	102188
2		42	530	1061	530	530	0	0	5507	413	110250	104330
3		44	546	1093	546	546	0	0	8696	652	115763	106415
4		45	563	1126	563	563	0	0	12207	915	121551	108429
5		46	580	1159	580	580	0	0	16067	1205	127628	110356
6		48	597	1194	597	597	0	0	20305	1523	134010	112182
7		49	615	1230	615	615	0	0	24951	1871	140710	113887
8		51	633	1267	633	633	0	0	30040	2253	147746	115452
9		52	652	1305	652	652	0	0	35607	2671	155133	116855
10		54	672	1344	672	672	0	0	41691	3127	162889	118071
11		55	692	1384	692	692	0	0	48334	3625	171034	119075
12		57	713	1426	713	713	0	0	55581	4169	179586	119836
13		59	734	1469	734	734	0	0	63479	4761	188565	120325
14		61	756	1513	756	756	0	0	72082	5406	197993	120505
15		62	779	1558	779	779	0	0	81446	6108	207893	120339
16		64	802	1605	802	802	0	0	91630	6872	218287	119785
17		66	826	1653	826	826	0	0	102701	7703	229202	118799
18		68	851	1702	851	851	0	0	114727	8605	240662	117330
19		70	877	1754	877	877	0	0	127786	9584	252695	115325
20		72	903	1806	903	903	0	0	141957	10647	265330	112726
21		74	930	1860	930	930	0	0	157329	11800	278596	109467
22		77	958	1916	958	958	0	0	173996	13050	292526	105481
23		79	987	1974	987	987	0	0	192058	14404	307152	100690
24		81	1016	2033	1016	1016	0	0	211626	15872	322510	95012
25		84	1047	2094	1047	1047	0	0	232816	17461	338635	88358

Residual Value of Average Property - Property Inflation 5% per annum + £2,500 per annum - Support

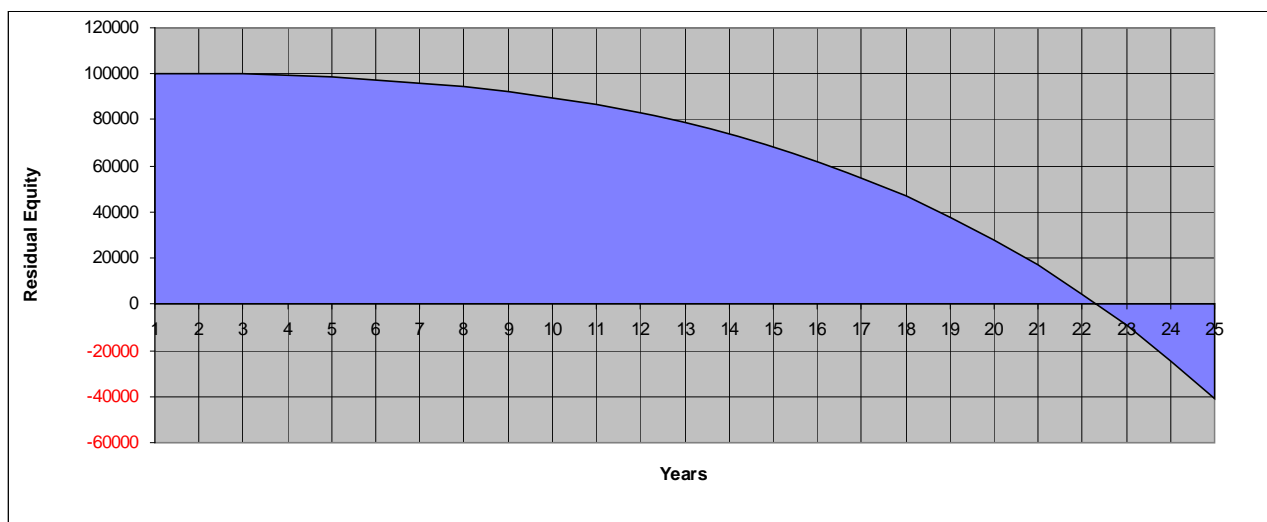
Graph 2



The effect of a more modest rate of growth in the value of the property of 3% per annum is shown in Graph 3. The residual value of the equity left declines so that even without any support, costs exceed asset value by year 22.

Residual Value of Average Property - Property Inflation 3% per annum - No Support

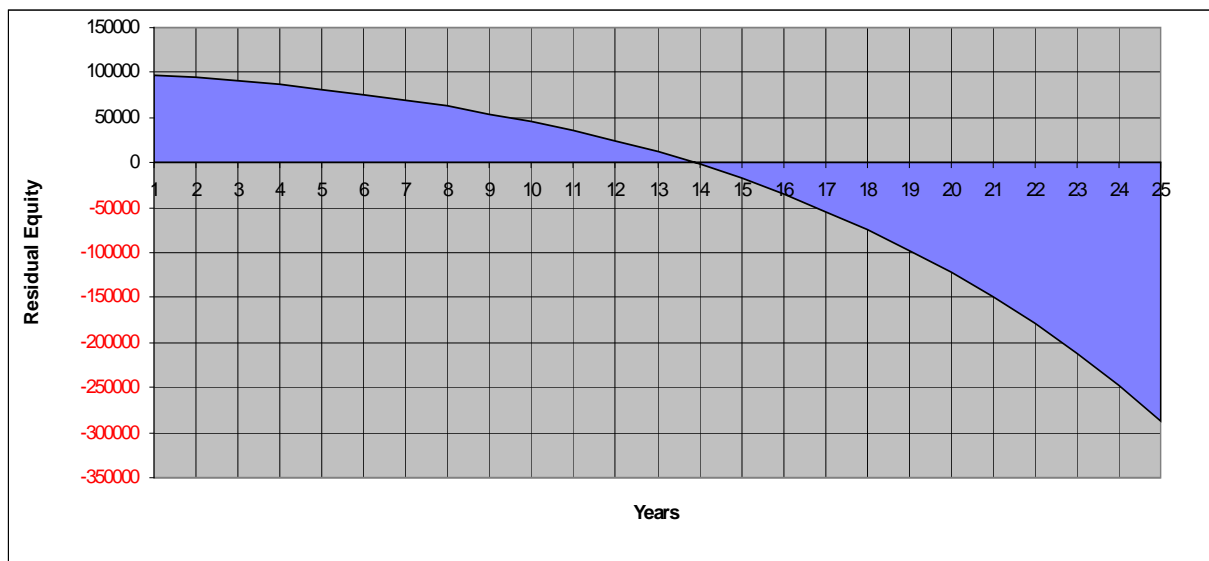
Graph 3



If support is introduced costing £2,500 per annum, with property price inflation still at 3%, after 14 years the equity is used up and in each subsequent year the organisation who owns the property and provides support will be incurring a growing loss it will never recover (Graph 4).

Residual Value of Average Property - Property Inflation 3% per annum + £2,500 per annum - Support

Graph 4



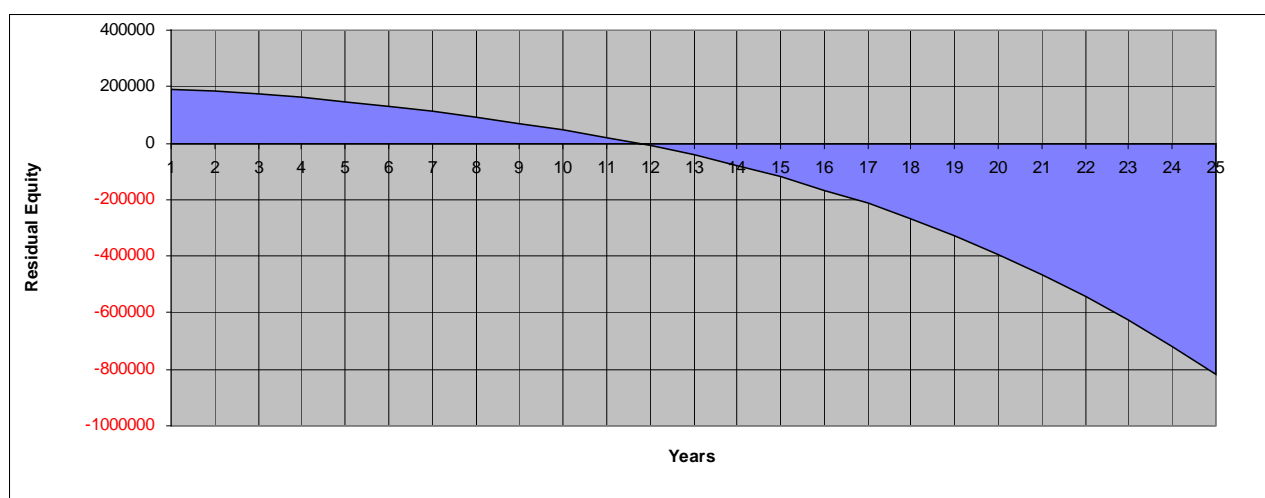
The next illustration (Graph 5) shows what happens:

- For a house worth twice the average - £200,000
- With support at home costing £10,000 per annum
- Assuming property increases in value at 3% per annum.

The result is that the property can be maintained and a reasonable package of support afforded from the property equity for 12 years only.

Residual Value Property Worth Twice Average (£200,000) - Property Inflation 3% per annum + £10,000 Support per annum

Graph 5



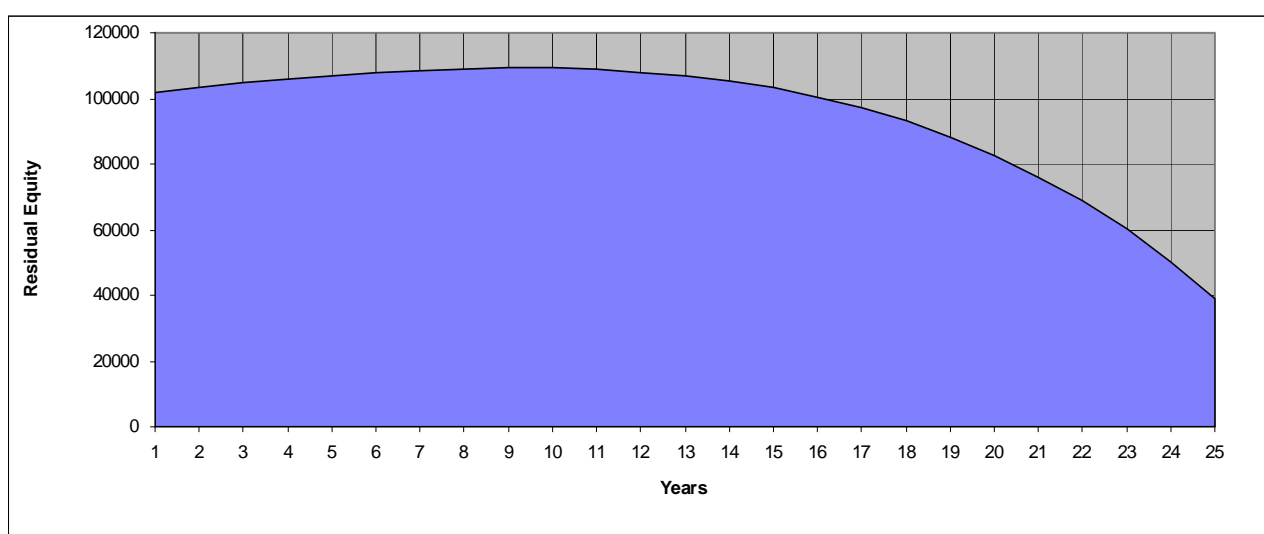
The model also allows the effect of having additional income from a rent to be calculated. Graph 6 illustrates the result of a landlord getting an income of £2500 from

a rent. In the example we assume £2500 is the cost of a modest care package so in effect the rent meets the cost of support. The result is that value of the equity will considerably exceed 25 years rather than run out after 14 years as in the comparable example without any rent (graph 4).

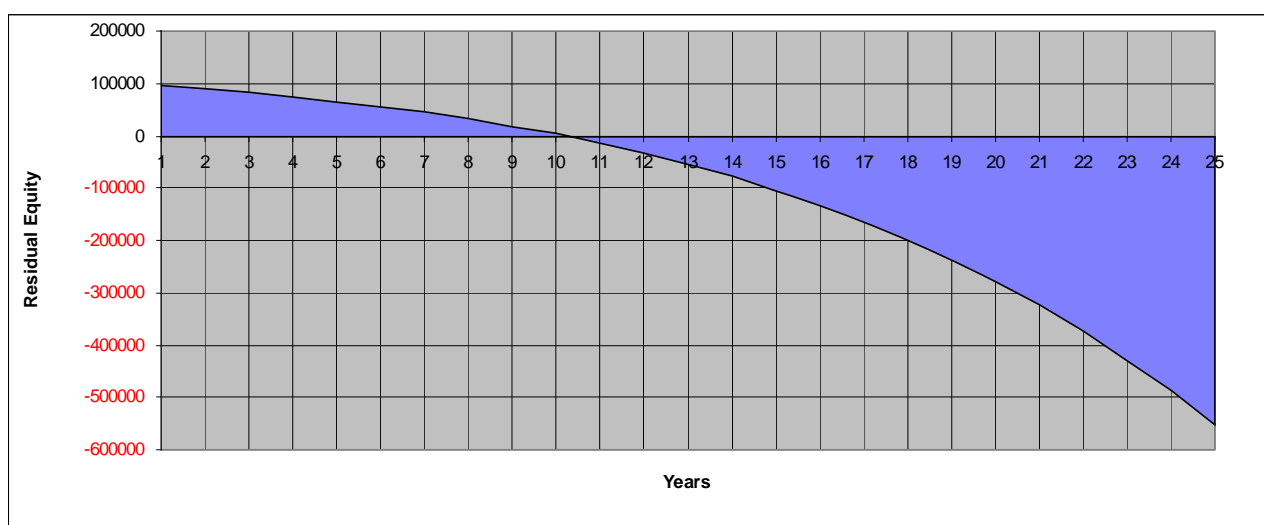
Finally, we show for an average property worth £100,000 the effect of assuming house values increase at 5% p.a., a rental income of £2,500 p.a. and support costing £10,000 p.a. (Graph 7).

Residual Value of Average Property - Property Inflation 3% per annum + £2,500 per annum Support + £2,500 per annum rent

Graph 6



Residual Value of Average Property - Property Inflation 5% per annum + £10,000 per annum Support + £2,500 per annum Rent



Graph 7

The examples are purely illustrative of how far equity can be expected to cover ongoing running and support costs on the assumptions made. The results are brought together in the table below. If house price inflation proves to be higher than the rate used in these examples with the RPI at the same level then much more can be afforded.

Table 3

Summary of Various House Price, Inflation and Support Cost Changes					
Graph	Property Value (£)	House Price Inflation (%)	Rent income	Support costs	Number of Years Service Equity will Cover
1	100,000	5	-	-	25+
2	100,000	5	-	2,500	18
3	100,000	3	-	-	22
4	100,000	3	-	2,500	14
5	200,000	3	-	10,000	13
6	100,000	3	2,500	2,500	25+
7	100,000	5	2,500	10,000	10

6.4 How will Prices Move in Future

What can be afforded from the equity depends very much on how the value of the property increases (or decreases) relative to other costs. The difficulty in making projections and reaching agreement depends on what assumptions are made.

There is an established, historical relationship between how certain costs move. These can be seen in price indices. Understanding the connection between prices for goods measured through the Retail Price Index (RPI), what we earn measured through the Index of Average Earnings, the cost of borrowing and housing prices may help in negotiating:

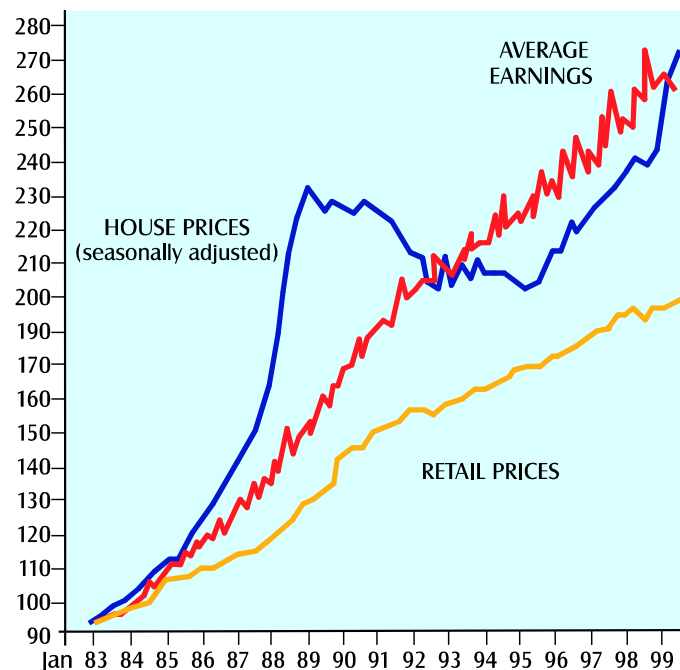
- i. Historically **earnings** have risen faster than **prices**. This is why people on average have got steadily better off. Support costs are linked to earnings rather than retail prices
- ii. **House prices** have also risen faster than other goods and services. They increase more in line with earnings than retail prices
- iii. There is a relationship between the **cost of borrowing** and retail prices. If people lend money there has to be a return for risk and foregoing consumption. The gap between the RPI and the cost of borrowing is the **real rate of return**. Historically around 4-5%.

These relationships are shown on the table below which gives figures for the last 16 years.

Table 4

1983-1999 - PRICE MOVEMENTS					
	House Price Index	Average House Price (£)	Average Earnings Index	Average Earnings (£)	Retail Price Index
1983	100	30,898	100	8,901	100
1999	250.5	77,405	264.0	23,338	194.7
Average % increase	8.8%		9.5%		5.6%
Note: Seasonally adjusted house prices. Arithmetic mean average. Source: Halifax PLC					

These are long term historic figures. In the short term there may be deviations as the graph below illustrates but the basic relationships are apparent.



Source: Halifax PLC

The normal financial health warning applies in considering the future - past performance is not necessarily a guide to the future. At present inflation is being contained at a low level. The costs of borrowing have consequently fallen reflecting the connection between the different variables. Some current financial modelling by housing associations is assuming long term rates of inflation of 2.5%, average earnings at 3.5% and consequently borrowing around 7-8%.

Gifted property means land as well

Sita is 22. She is autistic and can be aggressive and violent. She lives with her parents and brother and sister. Her parents are ageing and her mother suffers severely from arthritis and needs periods in hospital. The only member of her family that Sita will comfortably let care for her is her father. Her current living arrangements are unacceptable both to Sita and her family and are causing considerable stress.

The Social Services Department in the London Borough where she lives agrees that the position is unacceptable, however, they have no suitable alternative to offer. The best that they can do is offer a residential placement in special provision outside London. The family however is strongly committed to caring and supporting their daughter if they can and maintaining contact.

Sita's parents own their home. They are fortunate to live in a Borough where property values have risen sharply. They are also fortunate in that they own a house with a reasonable amount of land around it. The care assessment indicates that Sita would benefit from self-contained accommodation in which she would receive one-to-one support because of the nature of her needs.

In order to better meet Sita's needs as well as those of her family the proposal is to dispose of a plot of land to a local housing association which has agreed in principle to purpose-build a bungalow for Sita if the land is gifted to them.

Lesson: A partnership with a housing association combined with a creative approach to the property resources in their widest sense can unlock an alternative.

7 RENTED PROPERTY

Families may rent rather than own property. The landlord may be a local authority (i.e. the council), a housing association or a private landlord whether a limited company or an individual. This chapter considers the possibility of continuing to use the family home with the person with learning disabilities as a tenant.

In order to check the legal position it is first necessary to know what kind of tenancy the family holds.

7.1 Succession, Assignment and Inheritance

Where parents are tenants rather than owners of a property, adult sons and daughters, as close relatives, may have a legal right to take over the tenancy - to succeed. Rights depend on the form of tenure, which is usually related to the kind of landlord. Lettings will mainly be made on the following basis:

- Local authority - secure tenant
- Housing association - assured tenant
- Private landlord - assured shorthold tenant.

There are minor variations in how lettings are made and other less common forms of letting not covered here on which specialist advice may be necessary e.g. property tied to employment of parents, which normally cannot be passed on.

The key pieces of legislation are:

- S.87-90 of the Housing Act 1985 - secure tenants
- S.17 of the Housing Act 1988 - assured tenants.

Secure tenants

If a son or daughter “occupies the dwelling house as his only or principal home at the time of the tenant’s death” they can succeed to the tenancy. However only one right to succession is permitted. This means that if the deceased tenant succeeded to the tenancy on the previous tenant’s death any of their sons or daughters living in the house have no further rights to succession. This could happen with a husband and wife; the husband dies, his wife succeeds him but the sons and daughters cannot.

If there are several members of the family who qualify to succeed then in the absence of agreement between the members the landlord can select the successor.

Some local authorities may act flexibly about a second succession to a person with learning disabilities particularly since they will probably be required to provide alternative housing if they don't grant succession. It may be useful to

contact the local authority in advance to discuss and plan for the possibility of this.

One strategy to secure the property for a son or daughter where succession is not possible is to arrange for them to become a **joint tenant**. So if, for example, a mother succeeded to a tenancy on the death of her husband she could apply to the Housing Authority for her son or daughter to become a joint tenant with her. This mechanism can be used in other tenures and is one route to ensuring a close relative can continue to live in the property in the future.

If the property is bigger than is reasonably required by a successor, the landlord can seek to re-possess the property (Schedule 2 of the 1985 Housing Act, Part III, ground 16). The landlord must give notice of seeking possession within twelve months of the tenant's death. In order for a court to grant possession:

- Suitable alternative accommodation must be available
- It must be reasonable to require the property is given up.

Paul - Assigning a tenancy when parent goes into care and suitable Alternative accommodation

Paul is in his late forties. He has always been supported by his mother in a three-bedroom council flat. His mother is now in her eighties and following a period of illness went into residential care and the tenancy was eventually transferred to Paul.

There are two strands to Paul's support. First, a care package provided through an outreach service. Initially it was very intensive but the trick has been to be flexible in support and hours range up and down between ten and forty hours a week according to how Paul is coping - from time to time he drinks heavily.

The second strand is "*an amazing neighbour who will pop in every day and doesn't want paying.*" He gets sporadic support from his brother. There is a network of neighbours who have known Paul for years who support him in different ways. One comes in each day to check that Paul has had a meal. Another shops with him and helps with budgeting.

The flat is larger than Paul needs and the plan is that when a one-bedroom flat in the same block becomes available he will move.

Initially there were concerns as to how Paul would cope without his mother and whether he would always need very intensive support. In practice Paul says he is having a better life now he is not sharing with his mother.

Lesson: Tenancies can pass between relatives. The care required may be less than anticipated particularly when left in a familiar environment.

Assured tenant

Here the rights to succession are more limited. There is a right of succession by a **partner only** provided they have been living in the house as their principal home and the tenant who has died was not already a successor. There is no right for any other family member to succeed but in the absence of a qualifying partner another family member may inherit under the tenant's Will or through the rules of intestacy where there is no Will providing the family member occupies the house as his/her principal home.

The Court can only decide which partner can succeed to the tenancy. If there was a dispute as to which member of the family should inherit the tenancy the dispute would be decided according to the law of probate.

If the landlord granting the assured tenancy is a registered social landlord (housing association) they are subject to regulation by the Housing Corporation. The Performance Standards issued by the Corporation say that if a tenant dies and there is another member of the family who has been living with the tenant for a year before the tenant's death the association should grant a tenancy if:

- They request it
- The landlord is satisfied this is meeting an appropriate housing need in the area.

Housing Association - grants tenancy

David was granted the tenancy of a housing association bungalow following the death of his mother. He has a support package from a care provider and had some intensive support from the Community Team for People with Learning Disabilities to improve his cooking skills etc. He has weekly contact with his brother and sister-in-law who live nearby and provide him with emotional and practical support. He is now coping well.

Housing Association Tenant - adapted property

Lawrence lived in a council property with his mother. She needed an adapted accommodation due to a degenerative condition, which a local housing association provided. When his mother died, Lawrence remained in the property as the association's tenant. He has recently suffered a stroke and a broken leg and needs adapted property, which this is. His support needs are quite low and the local authority is happy to support him living alone.

Assured shorthold tenancy

Assured shortholds are commonly used by private landlords and in some circumstances by RSLs as well. They usually start off as a fixed term of six months.

Once the six months are up they usually become a periodic tenancy. If the tenant dies at a time when the tenancy is periodic then the statutory rights in section 17 will apply, so that a spouse can succeed to the tenancy. The right of succession is subject to the landlord's ability (once the initial six months are up) to end the tenancy by two months prior notice.

If the tenant dies during the initial six months, and does not leave a surviving spouse, there are no statutory rights of succession for any other family member, but the tenancy can be inherited under the deceased tenant's Will or intestacy providing the family member is living in the house as his/her principal home. Again the landlord can bring the tenancy to an end once the initial six months are up by giving two months prior notice.

Private tenant - Housing Association as an intermediary

Keith lived with his father in privately rented property. When his father died, he was supported to remain in the house despite threat of eviction by landlord. Eventually the local authority negotiated with the landlord to lease the property to a housing association as an intermediary. Friends moved in to share and after a few years Keith moved on to a more suitable property, in the location he preferred, as a tenant of the housing association.

The practice in Keith's example above of housing associations leasing properties from private landlords for 5 years or so has become more common in recent years. It can be a useful way of combining the attractions of private renting (supply of properties, greater choice) with some of the advantages of a social landlord. The disadvantage is that long term security of tenure cannot be guaranteed.

What if there is no right to succeed or a joint tenancy?

There may be no right for a son or daughter to succeed to a tenancy because succession does not apply to the form of tenancy or because of a previous successor. For example, a husband and wife were joint tenants. The wife succeeded and became the sole tenant on the death of her husband. There is no subsequent right for anyone else to succeed.

If there is no **right** to succeed there is nothing in principle to prevent the landlord simply granting a new tenancy to the son or daughter. However, a tenancy is a form of contract, therefore, strictly speaking, the issue of legal capacity arises. Does the prospective tenant understand the nature of the obligations of a tenant, including the obligations to pay rent and the possible consequences of breaking the terms of the tenancy agreement?

In this study we found some local authorities grant tenancies to people with learning disabilities without hesitation and as a matter of good practice. Others are very wary and housing officers (or staff in the legal department) raise many objections.

Council Tenancy - After First Succession

Graham lived with mother. When she died, the care manager explored the option of Graham remaining in the house. The Council was initially unwilling as mother had already inherited the tenancy from the father, but eventually agreed to transfer it to alternative single person's accommodation. The house was subsequently condemned. Graham's severe mental health needs led to him needing to live in a less isolated arrangement so he moved to a group home after a short period.

Second Succession - No Rights

Jason was left alone in a housing association property following the death of his mother. He was not eligible to take over the tenancy. The property was a three-bedroom house. The housing association offered him a flat in a nearby town but Jason did not want to move to a town having lived in a very quiet village all his life. He did not want to leave the property and refused to move. The housing association issued an eviction notice but then negotiated with the care manager and social worker for Jason to move to a one-bedroom property in the same street.

Assignment

This is the passing over of the tenancy to someone else by the tenant. The possibility of assignment depends on the type of tenancy. A secure tenant may not, subject to limited statutory exceptions, assign a secure tenancy. If he/she does assign, the tenancy ceases to be a secure tenancy. A secure tenancy can be assigned by way of an exchange with another secure tenant or an assured tenant of a registered housing association, or by an assignment to somebody who would have qualified to succeed to the tenancy if the person died immediately before the assignment.

In the case of an assured tenancy, if the tenancy is silent on the question of assignment, it is an implied term of the tenancy under Section 15 of the 1988 Housing Act that a periodic assured tenancy can only be assigned by a tenant with the consent of the landlord. The landlord can refuse consent for any reason and there is no implied condition that the landlord can only withhold consent on reasonable grounds.

If the assured tenancy contains express terms allowing for assignment, the terms may be expressed in one of two ways. Either, the tenancy may absolutely prohibit any assignment expressly or alternatively, it may say that the tenancy can be assigned with the landlord's consent. In the latter case, the landlord's consent may not be unreasonably withheld.

If a premium is paid as a condition for granting the original tenancy or a condition of renewing then there are no restrictions on the tenant's right to assign. Any agreement would set out the circumstances in which a tenancy is assigned and what control the

landlord has. In practice assignment is usually prohibited under the tenancy agreement or the tenancy can only be assigned with the landlord's consent.

Right to inherit

Discussions with landlords and families revealed considerable confusion and doubt about the right to **inherit** a tenancy rather than succeed under Housing Act legislation. The position is this:

- The statutory rights of succession will override inheritance by Will or on intestacy
- Where the statutory rights do not apply then the tenancy vests initially in the personal representatives of the deceased tenant, usually this is the tenant's child, parents, brothers and sisters or similar person
- The personal representatives can vest the tenancy in whoever is entitled to it by a written transfer document, called an assent
- Under a periodic assured tenancy, where there is no spouse to succeed, the tenancy can be ended by the landlord within 12 months of the tenant's death
- If a secure tenancy is vested by Will or disposed of on intestacy the secure tenancy will cease to be a secure tenancy from the time it is vested or when it is known that when it is vested or disposed of it will cease to be a secure tenancy. Once the secure tenancy has ceased it cannot subsequently become a secure tenancy
- A gift of a tenancy by Will can either be a specific reference to the tenancy or can be included as part of a general or residuary gift. "I give everything to Fred" means that Fred is entitled to my assured tenancy along with everything else.

Where there is an intestacy then whoever is entitled to the tenancy is governed by the nearness of the relationship to the deceased - the order of priority is again surviving spouse, children (equally), parents (equally), brothers and sisters (equally) and so on.

It does not matter if the person who inherits a tenancy lacks legal capacity. They are not prevented from inheriting the tenancy, which is a continuing asset (rather than the grant of a new tenancy) although the legal interest will remain with the Executor or Administrator of the estate until it is transferred to the tenant.

7.2 Renting a Relative's Property

Parents or other relatives have sometimes explored how they could offer better or more secure accommodation in their own home while both the parents and son or daughter still live at home. The changes required often revolve around:

- A degree of self-containment of the property
- Housing Benefit (where the person with learning disabilities is not working or on a very low wage so entitled to Housing Benefit) to pay a rent which in turn is used to cover some of the property or improvement/adaptation costs.

The benefit rules about letting a room or part of a house to a close relative are fairly clear. Housing Benefit is **not** payable where the family lives in and **shares the property**.

However there is no rule which prevents close relatives renting out a **separate, self-contained property**. There is a qualification; a council can refuse to pay Housing Benefit on a dwelling where they think that:

- a) The tenancy is non-commercial **or**
- b) The tenancy has been set up to abuse the benefit system.

As in previous models it is possible to combine different elements to get a better, more secure arrangement. The example below illustrates renting a property owned by parents and a Trust. Note that it is based on a second property rather than immediate occupation of the family home as in most other examples.

Purchase of Property by Parents Rented Out to Daughter (story provided by Josie's father).

My daughter Josie who has moderate to severe learning difficulties together with mild to moderate physical difficulties had been living in shared (and fully staffed) accommodation for 5 years after finishing her education (40 miles away from us and in a different county). Her placement broke down mainly because of her conflicts with staff – not other residents. 18 months ago the situation at the home became so distressing to her that we felt it necessary to have her here at home (on respite) until things calmed down (this was against her will as she felt that the staff would not allow her back into her home). A week later the management sent her a letter cancelling her placement – and requested immediate removal of her belongings (i.e. entire contents of her large room).

We now approached the Law Society and discovered that every adult (Josie was 26) is entitled to a solicitor (Legal Aid available and easy to get) and that in each area they have a member lawyer who specialises in the field. The Law Society whose Headquarters are in London can provide a list.

My wife purchased a delightful one-bed bungalow (£3,000 down) - £50,000 to pay for the next 30 years. Josie's lawyer negotiated with Housing Benefit to pay rent to my wife at £74 per week (i.e. cost of mortgage). Josie is on a lease, which specifies one occupant only etc - and has to be renewed every three years. Should my wife die, then it belongs to a Trust set up specially.

Josie now gets about 18 hours per week help from Social Services – who have been wonderful. They have a separate organisation who run and train staff and provide and facilitate an excellent social life – etc. They also get advice and help from local physiotherapists, psychologists etc (not just for clients but to help staff cope with emotional and physical difficulties).

Costs

Josie gets a total of £125.00 per week.

£ 75.00 Income Support

£ 50.00 Disability Living Allowance

£125.00 + £10.00 per week for Taxis to and from college.

(Josie must have less than £3,000 at all times - that is her total wealth).

Breakdown

£ 9.00 per week	Electricity
£ 6.00 per week	Telephone
£ 1.00 per week	Mobile (essential – Josie can wander and therefore all staff can locate her at any time, staff all have mobiles now – and works out cheaper and smoother for the network).
£ 20.00 per week	Food (inc. cat)
£ 10.00 per week	Clothing
£ 10.00 per week	Holidays
£ 5.00 per week	Cleaning Lady
£ 25.00 per week	Taxis
£ 3.00 per week	Water
£ 20.00 per week	Personal spends
£ 6.00 per week	Social Services
<u>£ 115.00</u>	- leaving £10.00 for extras etc.

Social Services/Benefits Agency will replace any broken items – fridge – security systems and CCTV (Josie can now see who it is outside her door – cost £80.00).

Josie has been integrated into her local community – and now integrates herself even more. All her neighbours know her (some have spare door keys) – she has her cat. It is now 12 months since Josie moved in – she will be there for life – the cottage is 8-900 yards from the city centre and is in a gentle area with easy access to shops, library, theatres. She entertains her friends (very difficult in shared house) without staff present and has now complete control of her own life. If there were conflict between herself and staff it would be the staff that would be moved to other clients – not Josie losing her home. For the first time in her adult life Josie is happy, fully occupied, fulfilled and independent and makes all her own decisions.

The cost to the State is now much, much less than it was before and infinitely more suitable for Josie, family and all the helpers – (and all taxpayers).

* Legal Note.

All initial meetings with Social Services had a solicitor present – promises can be made at

these meeting and can be broken!! Josie's advocate was also present.

Any future problems that crop up, Josie has solicitor's telephone number. She feels comfortable enough with him to be able, if necessary, to do this without having to tell anyone else.

If an authority refuses to help, the solicitor can insist on a judicial review – just the thought of this (cost to authority upwards of £100,000!) is likely to produce a rapid and satisfactory result. Even better – insist on Social Services appointing an independent advocate as well.

If parents have significant equity (i.e. most or all of the capital of a mortgage has been repaid) in their own home the way to raise money to purchase a property would be by taking out a new mortgage. There are now a number of lenders who offer loans specifically for the acquisition of properties for letting.

Is the tenancy commercial?

It has been decided in the courts that when looking at this question that the council should consider the arrangements between the landlord and tenant as a whole. They are likely to look at the following matters:

- i. Is the agreement between landlord and tenant legally enforceable, for example can the tenant be evicted if they do not pay the rent or break the terms of the tenancy agreement?
- ii. The relationship between landlord and tenant. Councils are advised that there is nothing non-commercial per se about letting to a relative
- iii. The amount payable - this is an important factor. The amount payable has to be a reasonable amount for renting. Charging too little might be an indication of a non-commercial arrangement
- iv. The living arrangements should allow the tenant a "significant degree of independence" and be at an 'arm's length' rather than the sort of arrangements between close relatives where for example money is paid for keep and where there would be sharing of household chores
- v. In relation to foster children who reach 18 councils are advised that arrangements where the foster child now pays rent should normally be treated as commercial.

Abusing the benefit system

A council may decide that a tenancy is commercial but that it has been set up to abuse the benefit system (take advantage of it). In one Court case it was decided that where a parent or a relation had provided accommodation to someone who then claimed Housing Benefit this in itself could not prove abuse of the system.

Appeals and eligibility

If the tenant has their claim for Housing Benefit turned down they have the right to appeal against the Housing Benefit department's decision. A request to appeal must be made in **writing** and signed by the claimant or their appointee within 6 weeks of the date on the letter from the council refusing the claim. The council should then look at the question again and write back with their decision to the tenant. The tenant has the right to a further stage of appeal within 4 weeks of the written reply from the council. Advice from a Citizens Advice Bureau or other welfare benefits advice agency used to appeals may be helpful.

Michael - Creating a Separate Property in a Relative's House - Self-Containment is Important

Michael still has his family around to support him. He can look after himself to a reasonable degree and gets himself around restaurants run by different members of his extended family for meals. One of his sisters volunteered to look after him by taking Michael into her own home. She did however want a degree of privacy and to be able to lead her own separate life. To get this she bought a new, larger house, which she could not really afford.

The plan was for Michael to have some rooms that would be his own with his sister having her own part of the house as well. Some areas like the kitchen could be shared. Work was started to make the house suitable although the building did not lend itself to complete separation of different areas to create two self-contained flats.

The sister had expected to be able to charge a modest rent to her brother in order to help pay the mortgage and meet the costs of the work. However she discovered too late that there is a problem.

Housing Benefit cannot be claimed on a rent charged by a relative living in the same property. The only way Michael's rent would be eligible for Housing Benefit in this example would be if two, self-contained properties are created. A very limited amount of sharing only is permitted under Housing Benefit rules for example of an entrance hall and stairway.

Lesson: Relatives can use their own property and if self-containment of a part is possible use Housing Benefit to meet some of the property cost - but only if properly planned.

7.3 Renting to a Group

The question of how to arrange letting to a group of people one of whom is the son or daughter of the family that owns the property frequently arises.

- i. Social Services may propose the property is shared with other people creating in effect a small "group home" in order to get a more economic

service. Supporting one person alone is often said to be too expensive. Supporting a group sharing is cheaper.

- ii. Relatives (and care providers) may propose sharing in order to provide some companionship or mutual support and possibly because it is felt to be a more secure arrangement. Security meant different things to parents. Some emphasised physical vulnerability and abuse others explained that a single person living alone would be more vulnerable to changes in Social Services policies and practices. It would be easier to move one person than a whole group of people with a network of relatives, carers and advocates.

A property and subsequently its ownership may pass to a Trust or be inherited directly by the son or daughter. Three related issues arise:

- The son/daughter may be secure but those coming in to share may, as lodgers, have little or no security of tenure. This can be a concern for the other relatives/advocates
- If the group fall out with each other their home is at risk
- Social Services as a matter of principle may be concerned about inequality in security of tenure amongst the individuals sharing.

A number of the case studies have alluded to these problems.

As we have seen, one way to tackle these issues is for the property to be managed and let by a housing association or indeed for the ownership to be transferred directly to an association by gift or sale. This means all lettings can be made on an identical and equitable basis.

A parent who lets to a number of tenants (including their own adult child) is in the same position as a private landlord where commonly lettings are on the basis of assured shortholds. A housing association landlord may also let on an assured shorthold. One reason for this is that an association (or private landlord) can obtain possession on giving two months written notice as well as on the statutory grounds of possession of an assured tenancy. Secure tenancies can be terminated if the accommodation is no longer suitable for the tenant but there isn't a similar ground for assured tenancies.

Once the initial six months have passed an assured shorthold does not give much security of tenure. An ordinary assured tenancy gives greater protection to the tenant but from the landlords perspective may present greater challenges in managing a group of people because it is considerably harder to obtain possession.

A secure tenancy and an assured tenancy can be ended where any of the statutory grounds apply. The main grounds for possession are set out in the box below. A landlord cannot get possession without getting a court order.

Greater security still can be obtained by granting a fixed term tenancy which can be for any period, which can only be ended prematurely if there is a clear breach of the tenant's obligations set out in the tenancy agreement. It is no longer legally possible

(even if desirable) to provide in a lease or tenancy that it can end if the tenant becomes incapable of managing their own affairs.

SUMMARY OF GROUNDS FOR POSSESSION

ASSURED TENANCIES

SECTION A – Cases where a court MUST order possession against an assured tenant.

Ground 1. An owner-occupier can recover possession if he has lived in the property and he needs the property back as a home for himself or for his spouse.

In order to proceed under this ground, the tenant must have been told at the beginning of the let that possession may be recovered under this ground.

Ground 6. The landlord needs possession in order to carry out a major reconstruction to the property or to demolish the property. A landlord cannot use this ground where the dwelling has been purchased subject to an assured tenancy.

Ground 8. Is serious rent arrears. The landlord must show that rent is in arrears both at the date of service of possession proceedings and the date of the hearing of the possession claim.

SECTION B – DISCRETIONARY grounds for possession which a landlord can use

If a landlord is using one of these grounds, he must persuade the court that it is reasonable to make a possession order as well as establishing existence of the ground.

Ground 9. The landlord can show that suitable alternative accommodation is either currently available for the tenant or will be available when possession takes place. Part III of Schedule 2 of the 1988 Housing Act sets out the criteria for suitable alternative accommodation.

Ground 10. The landlord proves that some rent is owing, the possession proceedings have started and that rent is still owing when the possession proceedings were served and the court must also be satisfied that it is reasonable to make an order. There is also ground 11, which allows possession (subject to the test of reasonableness) where there are persistent rent arrears.

Ground 12. Allows the landlord to recover possession where the tenant is in breach of a term of the tenancy, other than the agreement to pay rent.

Ground 13. The condition of the dwelling or any common parts has deteriorated through the fault of the tenant or someone living with the tenant such as a lodger or a sub-tenant and the tenant has failed to take such steps as he/she ought to have done to secure that person's removal from the dwelling.

Ground 14. The landlord successfully establishes misconduct on the part of the tenant. Either nuisance or annoyance to adjoining occupiers or where either the tenant or someone living with him is being convicted of using the dwelling for an immoral or illegal purpose or of allowing the property to be used in this way.

Ground 15. Allows possession proceedings where any furniture that is provided under the tenancy agreement has deteriorated as a result of either the tenant's ill treatment or that of any other person residing with him.

SECURE TENANCIES

As with an assured tenancy, the landlord must give notice to a secure tenant of the fact that it is going to take possession proceedings. To get possession the landlord must establish one or other of the grounds for possession which are set out in the Housing Act 1985 Schedule 2.

SECTION A

Cases where the landlord must prove to the court the relevant ground exists and that it is reasonable to make an order:-

Ground 1. The tenant has failed to pay rent or has failed to perform some other obligation in the tenancy agreement.

Ground 2. The tenant or someone else residing with him in the property has been guilty of conduct which is a nuisance or annoyance to neighbours or the tenant has been convicted of using the property or allowing it to be used for some immoral or illegal use.

Ground 3. There has been a deterioration of the dwelling caused by the neglect or default of the tenant or anyone residing in the house.

Ground 4. The condition of any furniture in furnished accommodation has deteriorated.

Ground 5. The landlord can prove that it was induced into making a grant of the tenancy by a false statement made knowingly by the tenant.

Ground 6. The tenancy has been assigned either to the tenant or a predecessor in title who is a member of the tenant's family and who is residing with him and a premium was paid in connection with the assignment.

SECTION B

Grounds where the court will give a landlord possession providing the ground is established and suitable alternative accommodation is available to the tenant. Where the landlord uses these grounds, the court does not have to consider the reasonableness of the order only that the ground has been proved and that suitable alternative accommodation is available.

Ground 9. The dwelling is overcrowded.

Ground 10. The landlord is proposing within a reasonable period of time of obtaining possession to demolish or reconstruct the property or part of the building in which the dwelling is situated and the landlord cannot carry out the works without obtaining possession.

Ground 11. The landlord is a charity within the meaning of the Charities Act 1993 and the occupation by the tenant as a dwelling conflicts with the charity's objects.

SECTION C

Grounds where a landlord can recover possession where the court is satisfied that it is reasonable to make an order and there is suitable alternative accommodation available to the tenant. The grounds, which are particularly important for people with learning disabilities are as follows:-

Ground 13. The landlord is able to prove that the house has special features, which make it suitable for occupation by a person with disabilities and there is no longer such a person residing in the property and the landlord needs it for another person with disabilities to live in.

Ground 14. The house is let to someone who alone or with others has circumstances, which mean that it would be difficult for them to meet their housing need and there is no longer anyone living in the property who comes within this category and the landlord needs the house for someone who does.

Ground 15. The property has been let to somebody with special needs and it is in close

proximity to a Social Service or other special facility but it is longer occupied by that person and the landlord needs it for someone who has special needs.

Where a son or daughter inherits the family home and shares it with others then the son or daughter will effectively be the landlord. The other occupants may in law be lodgers if they are sharing the house. Even if not strictly lodgers they will not normally have much security because they are sharing with their landlord.

Security can be enhanced by provision in their tenancy agreement even though they lack statutory security but residents who share can never be on an equal footing where one is the landlord and the others are tenants. If it is of paramount importance to Social Services or other parties that all residents are in an equal position then someone else has got to be the landlord; housing associations or Trustees are the most likely vehicles.

Finally the ability to make arrangements with a group sharing work will usually depend on care packages for all the residents being agreed. This is a risk in shared situations if other tenants cannot be found to take up vacancies at any time that the whole project cannot be sustained.

7.4 Joint Purchase by a Group of Parents and Letting

There are at least four ways parents (or other relatives) can combine resources to buy a property for sons and daughters.

- i. **Joint ownership through a limited company.** The participating parents form a company limited by shares. The company will buy the freehold of one of the family's property or a new different property. Occupancy of the sons and daughters will be on the basis of tenancies from the company to the individual occupiers.

Any loan required to purchase or equip and alter the building will be to the company on the security of the freehold. It is possible that a lender might want guarantees from the participating parents, and it is also possible that the lender might want those guarantees to be the joint liability of the participating parents - that means that each parent is responsible for all other parents' liability, not just their own. This is a significant risk where borrowing is required.

- ii. **Joint ownership.** The participating parents buy the house in their own names. In law the maximum number of joint owners is four. The parents jointly own as "tenants in common".

Occupation would be on the basis of individual tenancies - there is no limit to the number of beneficial tenants. The joint owners would borrow money on the security of the freehold and would be jointly liable to the mortgage company for the full amount of the loan. The advantage of this route is that the mechanics and processes are familiar.

As with the previous approach it is likely that lenders would seek to make all the parents jointly liable for the repayment of any debt irrespective of how much capital each family has invested.

- iii. **Freehold and long leases.** The participating parents form a limited company, which would buy the freehold. Each of them would have shares in the company. The company would then grant long leases of individual units of accommodation in the house to each of the participating parents. The total of the capital payments to be made on the grant of the leases would equal the cost of acquisition.

Each parent could then let their adult child occupy the individual unit leased to the parent on whatever terms they thought best. Each parent would borrow money on the security of the lease granted to them, and would contribute from their own resources the difference between the amount borrowed and the capital payment required on the grant of the lease. This means that each parent would be responsible only for their own borrowings and not for anybody else's. Ownership of shares in the freehold company would be transferred whenever a lease changes hands.

The advantage of this model over the first proposal is that it will be more familiar to lenders and it avoids the difficulties of parents being liable for each others' debts.

- iv. **Industrial and Provident Society.** Where there are seven or more people it is possible to form what is termed an Industrial and Provident Society which is registered with the Registrar of Friendly Societies. This creates a legal entity that can borrow in the same way as a limited company.

The advantage of an Industrial and Provident Society is that it is a model that is familiar to mortgage providers, model rules are available and in the past loans qualified for mortgage interest tax relief although the latter feature has now disappeared with the phasing out of tax relief.

In all models which involve unrelated families pooling resources it is important to think through how the property will be administered and maintained, how decisions will be taken and how families can get their investment back if circumstances change. A company structure allows for parents to be directors and the process of formulating a memorandum and articles of association should prompt discussion of most of the key issues.

The occupiers (as opposed to owners) will be vulnerable people whose security is paramount. The guiding assumption should be that they are entering a sharing arrangement on the basis that this will be their home for life. This means that granting of a tenancy or lease and the refund of each family's investment should be conditional on:

- a) A new purchaser of the share willing and able to replace the funds being withdrawn
- b) The proposed occupier should have learning disabilities and wish to share with the existing occupants
- c) The proposed occupier must be acceptable to the existing occupiers and generally compatible.

It would be open to those forming a company or joint ownership agreement to stipulate that if an acceptable, new purchaser cannot be found within a defined period (say twelve months) then the other shareholders/joint owners are required to purchase the share.

8 CONCLUSION

Policy and Planning

Living at home

On average, more than half of those with severe learning disabilities live with their families. Of these about 40% will have carers over 60 and as people get older there are many cases of single carers and carers over 70 and 80. The concern for families must be that planning for independence takes place before sickness, crisis or stress, force urgent moves that happen without proper planning and preparation.

Is it good for people to stay at home for as long as possible? What kind of life do carers want for their grown up sons and daughters? What families repeatedly say is that they want a secure future. Perfect security is not possible but good results seem more likely if planned and not left till the last moment. This is backed up by research, which reports that as one would expect *where transition is enforced because caregivers are unable to continue through death or illness, consequences are likely to be less positive.*

Planning for the future

While living in the parental home may be a positive choice, many parents are very concerned to plan for their son or daughter's move away. Some know exactly the kind of arrangement desired and talk this through with everyone involved, but find themselves unable to achieve it. Others would like to plan but do not know where to start. Some parents feel castigated for being over-protective, yet efforts to find a place elsewhere is thwarted by inadequate assistance. Some believe that there is nowhere suitable for them to go. There can be a profound lack of confidence in the ability of anyone else to offer a sustainable quality of life, often based on poor experiences in the past.

It is extremely difficult to plan. This may be partly a fear of the unknown or it may be because of experience of services giving rise to a lack of confidence. Feelings are complicated, guilt about not carrying on, worrying that you can't cope, wanting to do the best, the sense of loss when a family member moves out.

Housing Options

The advisory service *Housing Options* was set up to provide information and advice to people with learning disabilities, their relatives and housing and care providers. Housing Options repeatedly received enquiries as to how parents can best use their property when they die or can no longer provide care and support themselves so it can continue to house a son or daughter. Their experience has shown that:

- Parents unaware of the possibilities

- Social Services reluctant and not equipped to offer assistance
- There are few examples of good practice or models properly researched with example agreements and contracts
- Few social landlords (or other agencies) are interested or knowledgeable enough to be helpful.

The government aim - promoting independence

The step toward gaining independence is the most single significant stage for someone with learning disabilities which is too often not sufficiently well planned and where real choice may be sadly limited. Furthermore there is no firm guidance about what should be happening.

The Department of Health says that most adults with severe learning disabilities *will need to live other than in the family home at some point* and stressed the importance of services planned on an individual basis. The government's White Paper *Modernising Social Services* gives the national objective as *to promote the independence of adults needing support*, but what does this mean for an adult with learning disabilities?

Building confidence

There seem to be several important influences over how people gain independence and a home of their own:

- the expectations of families for the future
- their confidence about planning and the information available to them
- the timing and impact of care assessments and plans
- the accessibility of services

Early planning is essential, to avoid decisions being made in a period of crisis. So too is good preparation for the young person when he or she first becomes adult. Where a move does not happen at this point, the possibility should be raised regularly and sensitively over the years to ensure that the transition is effected as smoothly as possible.

Challenging the assumptions

If one assumption is that people remain at home with their families, another is that when this is no longer possible, the son or daughter with learning disabilities moves to some form of managed residential service. Why do people have to move? Government service principles promote independence, inclusion, citizenship and choice. Do we take enough account of what people really want as against what is conventionally available? This report started with an example of letters received from families contributing their experiences.

Looking to the future we often wonder whether it would be possible for our son to continue to live in our fairly large, detached bungalow with 24-hour care, possibly with one or two similar lodgers, after we are no longer able to care.

Interviews and small group discussions were held with four Social Services departments and four registered social landlords. These were drawn from different parts of the UK. This was supplemented by a number of telephone interviews with individual families seeking to plan for the future and staff in RSLs currently dealing with accommodation issues. A workshop was also held for people with learning disabilities and their parents.

The conclusion was that several options were possible for adult sons and daughters to continue to live in the family home. The property may be:

- Inherited directly or put into Trust
- Gifted to a social landlord, charity or similar body
- Sold or leased to a social landlord, charity or similar body
- Passed on by a relative through a tenancy with the intention of allowing continued occupation.

We also found numerous variations and some routes can be combined. So for example, Trustees may contract with a housing association for a management and main tenancy service or a private landlord (or parents) may lease properties to the housing association which lets the house.

APPENDIX A - MODEL AGREEMENT FOR THE PROVISION OF HOUSING

Accommodation by RSL

DATED-----2000-11-20

MR AND MRS DONOR (1)

And

[CHARITY] (2)

AGREEMENT

FOR THE PROVISION OF HOUSING ACCOMMODATION

DATE:

PARTIES:

- (1) “Mr and Mrs Donor”: [] Donor and [] Donor of
[]
- (2) “The Charity”: []

It is agreed as follows:

1. Definitions

In this agreement the following words and expressions have the following meanings:

- “Mr and Mrs Donor’s Nominee”** means the person or persons acting as Mr and Mrs Donor’s nominee in accordance with Clause 6
- “Property”** The [freehold] property known as []
- “Tenancy Agreements”** The tenancies listed in the schedule to this Agreement
- “The Tenants”** [] Donor, []
[] and []

2. Interpretation

- 2.1 The clause headings do not affect the construction of this agreement
- 2.2 Any reference to a specific statute includes any statutory extension or modification amendment or re-enactment of that statute and any regulations or orders made under it
- 2.3 The obligations on the part of the Charity contained in this Agreement are personal to the Charity and may be enforced by Mr and Mrs Donor for themselves and as Trustees for the Tenants
- 2.4 The expression “Mr and Mrs Donor” includes the survivor of them.

3. Background

- 3.1 The Charity is [a Registered Social Landlord within the meaning of the Housing Act 1996 and] is a charity and its objects include the provision of housing accommodation and associated amenities for people in need.
- 3.2 Mr and Mrs Donor have transferred the Property to the Charity subject to the Tenancy Agreements

- 3.3 The Charity has agreed to continue to provide housing accommodation for the Tenants on the terms of this agreement.

4. Provision of Housing

The Charity agrees with Mr and Mrs Donor

- 4.1 To perform and observe the landlord's obligations contained or implied in the Tenancy Agreements.
- 4.2 to liaise with [] County Council or other provider of care services in the provision of care services to the Tenants.
- 4.3 [Not to set rents and service charges under the Tenancy Agreements above an affordable level in accordance with standards or guidelines prescribed by the Housing Corporation under the Housing Act 1996].
- 4.4 [Not without the consent of any Tenant (while the Tenant has legal capacity) and not without having first consulted Mr and Mrs Donor to end that Tenant's Tenancy Agreement or take any steps to obtain possession of the accommodation let to him or her].

5. Rehousing

- 5.1 The Charity agrees with Mr and Mrs Donor that if any Tenancy Agreement is ended the Charity will let to the Tenant under that Tenancy Agreement suitable alternative accommodation on the same terms as the Tenancy Agreement that has ended (with such changes as may be appropriate to reflect the law and practice then current) and the provisions of clause 4 shall apply to the tenancy of such suitable alternative accommodation.
- 5.2 Suitable alternative accommodation means accommodation which is of similar size and has similar facilities as the accommodation comprised in the Tenancy Agreement at the Property and which is a house or flat shared with up to [three] other suitable occupiers.

6. Mr and Mrs Donor's Nominee

- 6.1 Mr and Mrs Donor may appoint up to [3] persons to act as their nominees and to exercise on their behalf during their lifetimes and/or after their death the powers given to Mr and Mrs Donor by this Agreement.
- 6.2 Any such appointment must be in writing or made by Will and notice of the appointment must be given to the Charity. An appointment made during the lifetime of Mr and Mrs Donor may be withdrawn by them at any time, and notice of any withdrawal must be given to the Charity.
- 6.3 Mr and Mrs Donor's nominee shall have no powers during Mr and Mrs Donor's lifetime unless their appointment expressly says so and in that case Mr and Mrs Donor may not exercise any of the powers given to them by this Agreement unless and until all such appointments have been withdrawn.
- 6.4 Mr and Mrs Donor's nominee shall at all times act in the best interests of [] donor.

7. Duration of Agreement

The Charity's obligations under this agreement shall continue for the life of the Tenants and the survivor of them or until [none of the Tenants] [] Donor] is able to live in the Property or in suitable alternative accommodation.

8. General

- 8.1 This Agreement and the Tenancy Agreements represent the whole agreement between Mr and Mrs Donor and the Charity.
- 8.2 Any notice given under this Agreement shall be in writing and may be given to Mr and Mrs Donor at the address stated in this Agreement (or such other address as Mr and Mrs Donor may notify to the Charity from time to time) and may be served on the Charity at its registered office for the time being.

THE SCHEDULE

Tenancy Agreements

Accommodation let

[]

Name of tenant

[]

APPENDIX B - ACTUAL EXAMPLE AGREEMENT OF GIFT TO RSL FOR PROPERTY PROVISION

In this study we focused on the direct use of the family home. It is possible, if it can be afforded, for families to provide the money for a different property to be purchased by an RSL (or other landlord). The considerations are much the same as described above. An example of this approach follows and Appendix B contains a model form of agreement.

EXAMPLE AGREEMENT FOR RSL TO ACQUIRE PROPERTY

This agreement is made the day of Two
Thousand between

1. and both of
- 2.
2. Housing Association whose Registered Office is situated at...("the Association")

WHEREAS:

1. In this Agreement the words or expressions hereinafter listed have where the context permits the following meanings:
 - a) "Mr and Mrs...." Shall mean the said.....or the survivor of them.
 - b) "The Guardians" shall mean the said.....andor the survivors or survivor of them and any other individuals or individual appointed by the said.....and.....or the survivors or survivor of them in place of any of them.
 - c) "The Association" shall mean....Housing Association or any replacement Association Company or Trust which shall take over or have responsibility for all or any of the activities and responsibilities ofHousing Association where such activities and responsibilities include the assets incorporated within the Scheme.
 - d) "The Fund" shall mean the sum of £ and any other sums added thereto hereafter by Mr and Mrs.....or others on their behalf.
 - e) "The Property" shall mean any property purchased by the Association from the Fund or any replacement property purchased from the proceeds of sale of any previous property purchased herein for the purposes of the Scheme or any share or interest in a property purchase with monies from the Fund for or towards the purposes of the Scheme.
 - f) "The Scheme" shall mean the provision of the Property for the use of and to provide appropriate accommodation for individuals with learning difficulties.
 - g) "The Beneficiaries" shall mean any individuals from time to time for whose benefit the Scheme has been created.
 - h) "The Principal Beneficiary" shall mean.....

2.have agreed to make available the Fund to the Association for the purposes of enabling the Association to manage and administer the Scheme and acquire in its name from monies provided by the Fund the Property for the use and benefit of the Principal Beneficiary and the Beneficiaries.
3. It has been agreed by the parties hereto they are entering into this Agreement for the purposes of acknowledging the wishes intentions and requirements...have of the Scheme and objectives and priorities of the thereof during the Principle Beneficiary's lifetime and thereafter following her death.

IT IS AGREED as follows:

1.shall make available the Fund to the Association for the purposes of the Scheme receipt of which the Association hereby acknowledges and has been received in the form of the transfer of the property.... ("The Property") and the sum of £ together representing the Fund.
2. The Association in acknowledging receipt of the Fund agrees to be bound by the terms of the Scheme and the provisions of this Agreement while is shall own and retain the Fund and in the event o fit no longer wishing or through any amendments to its constitution being unable to retain the fund the Association shall transfer the Property and any other assets forming the Fund to any other Association Company or Trust (approved byand the Guardians) and prepared to agree to be bound by the terms of this Agreement (and if required to enter into a replacement Agreement).
3. (a) It is agreed that the expressed purpose of the Scheme is to provide suitable accommodation throughout her lifetime for the Principal Beneficiary and the Association acknowledge that its primary responsibility throughout the lifetime of the Principal beneficiary is to use the fund for that purpose. It is apprehended that at the date hereof such suitable accommodation for the Principal Beneficiary lies in the acquisition and retention of the Property of the Principle Beneficiary and the beneficiaries.
- (b) The Association shall consult from time to time or as often as it considers appropriate (and in any event not less than once a year) during their lifetimes and guardians thereafter over the administration of the Scheme during the lifetime of the Principal Beneficiary and to permit.....or the Guardians to discuss and consider the administration of the Scheme and to alert the Association to any concerns they may have having regard to the best interests of the Principle Beneficiary including the possibility or desirability of the sale of the Property and the subsequent acquisition of alternative accommodation in the light of the interest of the Beneficiaries as a whole (including the interest of the Principal Beneficiary).
4. It is acknowledged by the Parties hereto that in the administration of the Scheme circumstances may arise whereby the provision of the Property may not be suitable or possible for the Principal Beneficiary or the Beneficiaries and it is agreed by the Association that in such eventualities it shall:

- a) In protecting the interests of the Principal Beneficiary find or provide alternative accommodation for her whether of temporary or permanent nature depending on her needs or use its best endeavours to ensure the best possible institutionalised care can be provided for her having regard to the Association's obligation to administer the Scheme for her benefit;
 - b) In the case of the Beneficiaries administer the Fund forming the Scheme for their benefit: And
 - c) Shall be at liberty to allocate the Fund to an alternative scheme or schemes for the benefit of the Principal Beneficiary and Beneficiaries where it is acknowledged the Scheme can no longer continue as envisaged under this Agreement and the Association shall be permitted to widen the scope of the Scheme to take into account changing circumstances provided the interest of the Principal Beneficiary shall not be prejudiced thereby And shall be able to charge to the Fund reasonable costs of the Association in carrying out all or any of the duties herein
5. During the administration of the Scheme the Association shall be at liberty to administer the same as it thinks appropriate having regard to the terms of this Agreement and will do all such things and take such steps as are necessary for the proper and successful management of the Scheme and its continued financial viability and will inter alia:
- a) Receive and process applications for accommodation and select residents for occupation of the Property and the supply or availability of supervisory staff And the Principal Beneficiary will be consulted in the selection of all such other residents.
 - b) Ensure there is appropriate support and welfare for the occupants of the Property.
 - c) Be responsible for resolving so far as possible disputes between the occupants of the Property complaints from owners or occupiers of neighbouring properties and for attempting to abate any nuisance caused within the area of the Property by the occupiers or any visitors.
 - d) To carry out all structural improvements and maintenance of the Property with a view to the continued success of the management of the Scheme and subject to agreed funding being included within any Revenue Budget.
 - e) To insure and maintain the property so that it remains suitable for the purposes of the Scheme and to ensure that the Property is used solely for the purposes of accommodation for the Principal Beneficiary and the Beneficiaries.
 - f) Not knowingly to permit any unlawful use of the Property and to ensure that all relevant statutes bylaws enactments orders and regulations are complied with insofar as they affect the Property its use and occupation.
 - g) To ensure adequate provision of furnishings and services to the Property from time to time for the proper administration of the Scheme.

- h) To ensure that all occupants of the Property are afforded appropriate licences or tenancies to occupy the Property.
 - i) To ensure that the Property meets the necessary fire precautions and where appropriate obtain the requisite fire certificate from the appropriate Fire Officer and comply with any additional requirements the Directorate of Social Services may have for fire precaution and the general safety and welfare of the occupants of the Property.
 - j) Inspect the Property prior to occupation and regularly thereafter and to permit..... and the Guardians to inspect the Property from time to time as they may wish without undue interruption or interference with the administration of the Scheme.
 - k) Pay and discharge all outgoings on the Property and keep in good repair the structure and external part of the Property and redecorate the external and internal parts of the same as frequently as may be necessary.
 - l) Undertake repairs of replacement to the internal structure of the Property and any furnishings therein.
 - m) Undertake repairs and replacement to all main services.
 - n) To insure the furnishings fixtures and fittings in the property (other than the personal property of the occupants) and to take out and have in force appropriate insurance and public liability cover.
 - o) Not to serve any notice to terminate the licence or the like of the Principal Beneficiary without first consulting.....and/or the Guardians.
 - p) Monitor the financial management of the Fund and the relationship of this to other funding in consultation with.....and/or the Guardians.
6. It is agreed that insofar as at anytime during the administration of the Scheme monies are available in the Fund such monies may be used in general consultation withand/or the Guardians towards the fulfilment of any of the requirements contained in the preceding clause where the Association is able to demonstrate it has insufficient income form the occupants of the Property to adequately administer the same or in the case of the need for substantial outlay of funds.

IN WITNESS whereof the parties hereto have hereunto set their hands the day and year first before written

SEALED by HOUSING ASSOCIATION

In the presence of:

Witness Name

Address

Occupation

APPENDIX C - RESOURCES

Housing Support

Ken Simons *My Home, My Life* has examples of people living independently with lots of practical information. It includes examples of parents moving out of their homes at an early stage and hospital resettlement. Values into Action, Oxford House, Derbyshire Street, London E2 6HG. Tel: 020 7729 5436.

Ken Simons, *A Foot in the Door* reviews the early days of supported living. It covers renting and owning also the issues of risk and protection. It discusses home ownership and support as well. Available from the National Development Team, St Peter's Court, 8 Trumpet Street, Manchester M 1 SLW. Tel: 0 1 61 228 7055.

Nigel King (1996) *Ownership Options* covers in detail six ways people with learning disabilities can become home owners it explains the hurdles, funding and benefit position. National Housing Federation, 175 Gray's Inn Road, London WC 1 X 8UP. Tel: 020 7278 6571

Nigel and Maurice Harker (2000), *Making Housing Choices* reviews a large number of alternatives for people with learning disabilities. Useful for both care managers and carers. Section 2 contains five accessible fact sheets. Pavilion Publishing, 8 St George's Place, Brighton, East Sussex BN1 4GB. Tel: 01273 623222

Values Into Action produce an excellent video made by and for people with learning disabilities showing a number of home and support possibilities. VIA also produce information on direct payments. Values into Action, Oxford House, Derbyshire St, London E 6HG Tel: 020 7729 5436

Trusts

Anthony Quinn is a solicitor specialising in Trusts for people with learning disabilities. He can supply a guide to families wishing to make legal provision for a person with learning disabilities. Anthony Quinn, 8 Ruskin House, 40/41 Museum Street, London WC1 1LT Tel: 0207 242 3454

Mencap have a booklet *Leaving money by Will to people with Learning Disabilities*. They also have a Trust Deed as explained in Chapter 5. Mencap, FREEPOST Room 161, 123 Golden Lane, London EC1Y 0RT. Freephone: 0500 243444

MIND similarly publishes *Making Provision* covering different types of Trusts. MIND, 15 - 19 Broadway, London E15 4BQ. Tel: 020 8519 2122.

Renting

For a guide to the legislation covering different types of tenancy consult Andrew Arden and Caroline Hunter *Manual of Housing Law*. Sweet & Maxwell Ltd, 100 Avenue Road, Swiss Cottage, London NW3 3PF or similar reference book.

The National Housing Federation produces a simple, illustrated tenancy for use by people with learning disabilities. Available from NHF, 175 Gray's Inn Road, London EC1X 8UP. Tel: 020 727 66571.

Some of the specialist Housing associations listed below also have their own accessible tenancy and support agreements.

Statutory Instrument 1998 No 3257 updates the rather complex rules on renting to relatives. This can be obtained from the Stationery Office.

The Virtual Tenancy is an interactive computer programme to help people understand their rights and responsibilities. Available from Pavilion Publishing.

Specialist Advice

National Disabled Persons Housing Service
Brunswick House
Deighton Close
Wetherby
West Yorkshire
LS22 7GZ
Tel: 01932 588 580
May be useful when adaptations are required

National Association of
Citizens Advice Bureaux
115 - 123 Pentonville Road
London N1 9LZ
Tel: 020 7833 2181
www.nacab.org.uk

Enable
7 Buchanan Street
Glasgow G1 3HL
Tel: 0141 226 4541

National Autistic Society
393 City Road
London EC1Y 1NG
www.oneworld.org/autism_uk

Housing Options
78A High Street
Witney OX8 6HL
Tel: 01993 705 012
www.hoptions.demon.co.uk

Ownership Options Scotland
Unit 2, John Cotton Centre
10 Sunnyside
Edinburgh EH7 5RA
Tel: 0131 661 3400

Provides free telephone advice on Housing for People with learning disabilities. Publishes 20 fact sheets.

The Scottish equivalent of Housing Options

Law Society
113 Chancery Lane
London WC2A 1PL

People First
Instrument House
207 - 215 King's Cross road
London WC1X 9DB
Tel: 020 7713 7400

Mencap
123 Golden Lane
London EC1Y 0RT
0207 454 0454

SCOPE
6 Market Road
London N7 9PW
www.scope.org.uk

Mencap in Northern Ireland
4 Annandale Avenue
Belfast BT7 3JH
Tel: 01232 691 351

Benefits

Benefit Enquiry Line
Tel: 0800 882 200

The Disability Alliance
Universal House
88 - 94 Wentworth Street
London E1 7SA
Tel: 01207 247 8776

Disability alliance publish the authoritative
Disability Rights Handbook

Independent Living Fund
PO Box 183
Nottingham NG8 3RD
Tel: 0115 942 8191