

Mental Capacity and Consent Policy



Policy Name	Mental Capacity and Consent Policy
Policy Reference	STW02
Effective Date	12 th October 2026
Approved By	Harbour Light Board
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Policy Owner/Dept	Safeguarding & Tenant Welfare
Policy Author	Peter McEleavey
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Version	Date	Changes	Approver
1.0	11 October 2026	Board consideration draft – legal/currentness revisions	Harbour Light Board

Relevant National Standards or Regulations	Regulator of Social Housing (RSH) – Transparency, Influence and Accountability Standard Regulator of Social Housing (RSH) – Tenancy Standard Regulator of Social Housing (RSH) – Safety and Quality Standard Care and Support Statutory Guidance (Department of Health and Social Care) Housing Ombudsman Complaint Handling Code Social Care Institute for Excellence (SCIE) MCA guidance Local Authority Safeguarding Adults Board procedures
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Relevant Legislation	• Mental Capacity Act 2005 • Mental Capacity (Amendment) Act 2019 • Care Act 2014 • Equality Act 2010 • Human Rights Act 1998 • Data Protection Act 2018 and UK General Data Protection Regulation (UK GDPR) • Housing and Regeneration Act 2008 (governing the RSH regulatory framework)
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Purpose

Harbour Light Assisted Living CIC (“Harbour Light”) is committed to respecting tenants’ rights and choices in accordance with the Mental Capacity Act 2005 (MCA). As a registered provider of social housing, Harbour Light manages supported accommodation; care and support are independently commissioned and provided by Support Companies. This policy explains how we recognise and respond to capacity and consent matters affecting our landlord functions, including accessible communication, referrals, tenancy agreements, repairs and tenancy management. Capacity is presumed unless established otherwise for the particular decision at the relevant time. Tenants are entitled to make decisions that others may regard as unwise. Harbour Light does not provide care, undertake clinical assessments or commission formal mental capacity assessments. We consider relevant assessment information supplied at referral and, if concerns arise later, raise them with the Support Company through agreed channels or apply our safeguarding procedures where appropriate. This does not transfer Harbour Light’s landlord decisions or legal responsibilities to the Support Company.

Scope

This policy applies to all Harbour Light staff, Board members, and anyone working on our behalf (including volunteers or contractors) who are involved in tenant-facing activities or tenancy management. It covers all adult tenants (aged 18 and over) living in Harbour Light accommodation, especially those who may lack the mental Capacity to manage aspects of their tenancy or give informed consent. It also extends to how we interact with referring agencies, support providers, appointees, and family members in relation to a tenant’s Capacity and decision-making. The scope spans the entire tenant journey – from referral and allocation of housing, through tenancy sign-up and day-to-day management, to any tenancy actions (such as agreement changes or terminations) – ensuring that at each stage, issues of Capacity and consent are handled appropriately. This policy should be read in conjunction with related Harbour Light policies and procedures, notably our **Safeguarding Adults Policy (STW01)** and referral process guidelines, which together ensure a consistent approach to protecting tenants who may be at risk due to impaired Capacity.

Responsibilities

Board of Directors and Senior Management: Harbour Light’s Board and senior leaders are responsible for ensuring that this policy is implemented and maintained. They must foster a culture that recognises tenant autonomy and protects vulnerable individuals. The Board will approve the Mental Capacity and Consent Policy and oversee periodic reviews. Senior Management must ensure staff are aware of the policy, receive appropriate training on the Mental Capacity Act and safeguarding, and have the tools to apply this policy in practice. Management is also responsible for liaising with external agencies (e.g. adult social care, health services) at a strategic level to facilitate cooperation when tenants with limited Capacity require support beyond Harbour Light’s remit.

All Staff and Volunteers: Harbour Light staff and anyone acting on our behalf must respect the presumption of capacity, provide reasonable communication adjustments, recognise and record concerns relevant to their landlord work, and refer those concerns through their manager or safeguarding arrangements. Staff do not diagnose conditions or commission formal capacity assessments. Where a tenant has a Support Company, relevant concerns are ordinarily communicated to that company for consideration within its independently commissioned



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support responsibilities. A safeguarding concern is escalated under STW01 without assuming that Harbour Light can instruct clinicians or social workers to assess capacity.

Referring Agencies and Support Companies: Harbour Light expects referrers to provide relevant existing information about decision-specific capacity, communication needs and any known legal representatives when completing the referral process. Where assessment evidence is needed for a placement or tenancy decision, the referrer and relevant statutory or support professionals are responsible for arranging this through their own processes; Harbour Light does not commission or direct assessments. After occupation, a Support Company may identify or raise concerns and determine whether to initiate an assessment through its own arrangements. Harbour Light will explain any landlord decision for which information is needed and consider the evidence appropriately, while remaining responsible for its housing-management decisions.

Tenants and Representatives: Tenants are encouraged to engage with Harbour Light staff regarding any support they might need in understanding or managing their tenancy. We recognise that tenants have the right to make their own choices, and we will support them in doing so. If a tenant has given someone legal authority to act on their behalf (for example, a Lasting Power of Attorney) or has a Court-appointed Deputy or a DWP Appointee managing their welfare or finances, it is important that this is communicated to us (usually via the referral). Harbour Light will then involve that appointed representative appropriately – for instance, sharing relevant tenancy information or seeking decisions/consent on the tenant's behalf within the scope of that representative's authority. Representatives should act in the best interests of the tenant and work with us to sustain the tenancy. (For example, a financial appointee should ensure rent is paid on time, and a health/welfare deputy should be consulted if tenancy issues arise that the tenant cannot decide on themselves.)

Legislation and Regulations

This policy is informed by and compliant with all relevant legislation and regulatory standards. Key Acts and regulations include:

- **Mental Capacity Act 2005 (MCA)** – The foundational law governing how decisions are made for adults who lack Capacity. Harbour Light fully adopts the MCA's five core principles, particularly the presumption of Capacity and the requirement that any act or decision on behalf of a person lacking Capacity must be in their best interests and impose the least restriction on their rights. We follow the MCA's definition of Capacity as being decision-specific and time-specific, and we abide by its guidance (and the MCA Code of Practice) in all relevant actions.
- **Mental Capacity Act 2005 and deprivation of liberty:** The Deprivation of Liberty Safeguards (DoLS) remain the applicable authorisation process in hospitals and care homes where their statutory conditions are met; restrictions in supported living and other community settings may require Court of Protection consideration or authorisation. Liberty Protection Safeguards (LPS), provided for by the Mental Capacity (Amendment) Act 2019, have not commenced and must not be described as operational. The UK Supreme Court judgment of 2 June 2026 requires a multifactorial assessment of whether particular arrangements amount to a deprivation of liberty rather than reliance on the former single 'acid test'; the person's wishes, feelings and any objection are important. Harbour Light is the landlord, does not authorise or manage care restrictions and must not treat a Support Company's involvement or a capacity assessment as automatic authorisation. Where restrictions may affect housing access, safety or tenant rights,

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Harbour Light records and raises the concern through the Support Company or safeguarding route and cooperates with the appropriate bodies within its landlord role.

- **Care Act 2014** – Establishes duties for safeguarding adults at risk and promoting wellbeing. Under the Care Act, Harbour Light has a responsibility to act if we suspect an adult with care and support needs (including those who lack mental Capacity) is experiencing or at risk of abuse or neglect. We work in partnership with local authorities' Safeguarding Adults teams, referring concerns when necessary (see Procedures). The Care Act also emphasises cooperation between housing providers and social services – we embrace this duty to cooperate, especially where a tenant's Capacity or vulnerability is in question.
- **Equality Act 2010** – Protects people from discrimination, including on the basis of disability. Many of our tenants have disabilities (e.g. learning disabilities, mental health conditions) that might affect their Capacity or how they communicate. Harbour Light is committed to making reasonable adjustments to our services and communications to ensure tenants with disabilities or impairments are not disadvantaged. We treat all tenants with fairness and respect, in line with the Regulator of Social Housing's Transparency, Influence and Accountability Standard, which requires understanding and responding to the different needs of tenants (including those needing additional support). This means, for example, providing information in an easier-to-understand format if needed or allowing more time for a tenant to make a decision.
- **Human Rights Act 1998** – We respect tenants' human rights, notably the right to private and family life (Article 8), which can relate to their home, and the right to liberty and security (Article 5), which ties into any situations where a person might be deprived of liberty due to lack of Capacity. We will not interfere with a tenant's rights except in accordance with the law and only when necessary (for instance, entering a property or sharing personal information due to serious risks would be carefully justified under safeguarding principles). By supporting tenants' decision-making and obtaining valid consent for any actions affecting them, we uphold their human rights.
- **Data Protection Act 2018 / UK GDPR** – When it comes to consent and Capacity, we recognise that a tenant must have Capacity to consent to the processing of their personal data (e.g. sharing information with a support agency or discussing their tenancy with a relative). If a tenant lacks Capacity to consent to an information-sharing decision, we will rely on applicable legal bases (such as vital interests or safeguarding) and consult with any attorney/deputy to ensure we handle data lawfully. We maintain confidentiality and only share information in line with our Privacy Policy and safeguarding protocols. (Notably, if a tenant is unable to consent and is at risk, we may share information without consent to protect them, as allowed under safeguarding law – see Procedures below – in such cases, we ensure the sharing is necessary and properly documented.)
- **Regulator of Social Housing (RSH) Standards** – Harbour Light takes account of the current Transparency, Influence and Accountability Standard, Safety and Quality Standard and Tenancy Standard in its housing-management functions. We provide accessible information, consider tenants' diverse needs, manage homes safely and approach tenancy decisions fairly and transparently. These housing standards do not authorise Harbour Light to deliver clinical care or make decisions reserved to a legally empowered representative or competent authority.
- **Housing Ombudsman Guidance** – The Housing Ombudsman has highlighted the importance of landlords having a clear approach to vulnerability and Capacity. In a 2024 report, the Ombudsman recommended that landlords implement strategies to recognise and respond to vulnerable residents, aligned with the Equality Act, Human Rights Act, and Care Act. We have taken these recommendations on board. We also note the



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Ombudsman's Complaint Handling Code, which requires landlords to adapt processes to accommodate an individual's needs and have a reasonable adjustments policy. While this Mental Capacity and Consent Policy is not about complaints, it complements those principles by ensuring our housing services are flexible and responsive to tenants who may need extra support with understanding or decision-making.

All staff are expected to familiarise themselves with these laws and standards at a level appropriate to their role. Harbour Light will provide guidance and training so that our team understands the legal duties related to mental Capacity and consent. If in doubt about a legal issue or the application of a regulation, staff should seek advice from management before proceeding.

Procedures

Harbour Light has put in place the following procedures to ensure that issues of mental Capacity and consent are handled consistently and effectively:

5.1 Referral and Admission: Harbour Light accepts applicants through its established referral arrangements. Referrers are asked to identify any existing, relevant assessment of capacity to understand the particular tenancy decision, communication requirements and any representative's documented authority. The information is considered when assessing housing suitability and how a lawful tenancy can be arranged; an appointee for benefits alone is not automatically empowered to sign a tenancy. Staff explain tenancy terms in accessible language and offer practicable assistance to enable the applicant to make their own decisions. Where credible information indicates the applicant may lack capacity for the particular tenancy decision, Harbour Light seeks clarification from the referrer and checks whether an appropriately authorised person or court order exists. It does not itself arrange a formal capacity assessment, compel a professional to undertake one or assume the absence of capacity solely from a disability, diagnosis or support needs. If the legal route for entering into the tenancy is unclear, the matter is referred for appropriate legal advice before proceeding. Relevant information and communication arrangements are recorded confidentially and only shared where lawful and necessary.

5.2 Presumption of Capacity and Supported Decision-Making: All tenants will be assumed to have Capacity unless there is clear evidence otherwise, in accordance with the MCA's first principle. Harbour Light staff will approach every interaction with the mindset that the tenant *can* make their own decisions about their life and tenancy. We take care not to undermine a tenant's autonomy – for instance, if a tenant makes a choice that we or others find unwise (such as how they spend their money or whether to refuse a support service), we do not automatically treat them as incapable. Instead, we respect the decision as long as it does not pose a serious risk. Our team will provide practical support to help tenants make and communicate decisions. This could include: offering information in different ways (explaining verbally, using visual aids, or writing in simpler terms), giving the tenant extra time to process information, involving someone they trust (with consent) to help them understand options, and checking back to ensure the tenant has comprehended important points. We want to maximise each tenant's ability to control their tenancy – for example, a tenant might need help to understand their rent statement, so our income officer can go through it with them step by step rather than just sending letters. By making "all practicable help" available before concluding someone cannot decide, we align with MCA principle 2 (support to make decisions). If language or sensory impairments are a factor, we will seek translation services, sign-language interpreters, or other aids as needed. These efforts



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reflect Harbour Light's duty under the Equality Act to accommodate disabilities and ensure effective communication. All such support actions (and their outcomes) should be documented in the tenant's file for future reference.

5.3 Identifying Possible Lack of Capacity: During the tenancy, if Harbour Light staff observe signs that a tenant may be struggling due to impaired Capacity, they must take note and act. Signs could include: the tenant repeatedly cannot understand or remember important tenancy obligations (like failing to pay rent despite support, or persistently unsafe behaviours in the property); the tenant appears confused about decisions that have significant consequences (for example, wanting to abandon their home impulsively without understanding the outcome); a marked decline in the tenant's cognitive abilities or mental health observed over time; or reports from support workers or family that the tenant "doesn't seem to understand" certain issues anymore. Staff are trained to recognise potential indicators of vulnerability and incapacity – such as self-neglect, hoarding, inability to manage personal affairs, or communication difficulties – as part of our overall approach to supporting vulnerable residents. If any staff member believes a tenant may lack Capacity for a specific decision or task related to their tenancy, they should escalate the concern to their line manager and our designated Safeguarding Officer for guidance. We will not label a tenant as "incapacitated" based on hunches or isolated incidents; Capacity can fluctuate and is decision specific. Instead, we initiate a process to gather more information. This may involve talking to the tenant's support provider or social worker (with consent if the tenant has Capacity to consent to us doing so, or in their best interests if they do not), to share observations and see if the support professionals have noticed similar issues. We check our records for any history of Capacity assessments. If the tenant has an existing diagnosis (e.g. advanced dementia) that suggests progressive loss of Capacity, we remain vigilant but still assess the current situation specifically. At this stage, our goal is to build a fuller picture and decide if further action is needed through appropriate Support Company or safeguarding channels.

5.4 Raising Concerns Through Existing Arrangements: Harbour Light does not commission or arrange formal mental capacity assessments. When a capacity concern arises in the course of landlord functions, staff record objective, decision-specific observations and report the issue to the designated manager. Where the tenant receives support, Harbour Light normally shares an appropriate concern with the Support Company under the existing agreed channels; that company determines whether to initiate assessment or involve relevant professionals through its own arrangements. Harbour Light cannot direct social workers, doctors or other independent professionals to undertake an assessment. Where an apparent risk of abuse, neglect or serious harm arises, Harbour Light follows STW01 and the relevant safeguarding referral arrangements rather than waiting for a capacity report. While the matter is clarified, staff make reasonable communication adjustments, consider proportionality and seek legal advice for significant tenancy decisions; they do not assume that uncertainty about capacity automatically removes a tenant's ability to decide.

5.5 Adjusting Tenancy Management for Tenants Lacking Capacity: When it is confirmed (via a referring agency's information or a new assessment) that a tenant lacks mental Capacity to make specific decisions related to their tenancy, Harbour Light staff will adapt our processes in response. The guiding principle is that any action we take on behalf of that tenant should be in their best interests. The following measures will be implemented as appropriate:

- **Involvement of Appointees/Representatives:** Harbour Light identifies and verifies the authority of any person purporting to act for a tenant, and records only the information



necessary for tenancy management. A DWP appointee may manage the person's benefit claims and payments but does not, by that appointment alone, have authority to sign a tenancy agreement or make general housing decisions. A property and financial affairs attorney or Court of Protection deputy can act only within the terms and conditions of their instrument or court order. A health and welfare attorney is not automatically authorised to manage contracts or finances. Family members and next of kin have no general substitute decision-making authority merely by virtue of their relationship. Information is shared, and decisions sought only insofar as the verified authority and applicable law permit; the tenant remains involved and supported wherever possible.

- **Consent and Signatures:** A person's capacity is assessed for the particular decision, rather than inferred from their ability to physically sign a document or from a diagnosis. Harbour Light will not presume that every tenant with a capacity concern requires a substitute signatory. If there is reliable evidence that a prospective or existing tenant lacks capacity for a tenancy-related decision, Harbour Light will establish the legally appropriate route and obtain case-specific legal advice where necessary. An appropriately empowered attorney, deputy or court decision may be relevant, depending on the particular circumstances and scope of authority. A DWP appointee or next of kin must not be asked to sign a tenancy merely because of that status. Staff must not create an interim licence or assume that a multi-agency best-interests meeting itself creates authority to enter into a tenancy; any proposed interim legal arrangement requires specific consideration and advice.
- **Tenancy Support and Sustaining the Tenancy:** Harbour Light makes reasonable adjustments to its landlord communications and processes and considers proportionality before significant tenancy action. Independently commissioned Support Companies provide their own care and support, including any support planning, day-to-day welfare checks or benefits assistance within their commissioned remit; Harbour Light does not commission or manage those services. Where a tenant is unable or unwilling to report a repair, the Support Company is expected to report it under the agreed arrangements, while Harbour Light remains responsible for the repair from receipt to completion. Suspected exploitation or neglect is considered under STW01. Any tenancy enforcement is assessed on its facts with appropriate regard to vulnerability, capacity information and legal advice, without promising an automatic suspension or outcome.
- **Safeguarding and Risk Management:** When a tenant's lack of Capacity poses a risk to themselves or others (for instance, they are unable to manage basic self-care and their living conditions deteriorate to a dangerous level, or they are vulnerable to abuse), Harbour Light will activate our Safeguarding Adults procedures. In line with Safeguarding Policy STW01, staff will report the situation to the local authority Safeguarding Adults team. We may also convene or participate in multi-agency meetings (including social workers, health professionals, family, etc.) to agree on a plan of action. All actions in such scenarios are guided by the principle of protecting the tenant from harm while respecting their rights. Notably, if a tenant cannot consent to a safeguarding referral due to a lack of Capacity, we are permitted to raise the alert without their consent, as protecting them from significant harm is a priority. (The MCA allows information sharing and intervention in a person's best interests if they lack Capacity to consent and are at risk.) We will document our rationale for such decisions clearly, referencing the Mental Capacity considerations. Our staff will then cooperate fully with any safeguarding investigation or plan, which might include actions like arranging extra support at home, or in extreme cases, helping to facilitate a move to a more suitable setting if living independently is no longer safe. Any such move would be led by social services via a best interest decision –



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Harbour Light's role is to support the outcome (e.g. by holding the tenancy open during a hospital stay or allowing a managed move with no penalties).

- **Communication and Consent for Services:** For all routine housing interactions, we will tailor our communication when dealing with a tenant who has limited Capacity. If a tenant cannot provide informed consent for a particular decision, we will seek consent from their attorney/deputy or make a best interest decision in consultation with relevant parties. For example, consider consent to enter a property: under normal circumstances, we obtain the tenant's permission to send in contractors for repairs. If the tenant lacks the Capacity to understand this request, we will discuss with their representative or, if none, carefully proceed if it is necessary (like an urgent safety repair) on the basis that it benefits the tenant (best interest). We would explain to the tenant as much as possible, even if they cannot fully grasp it, and ensure another trusted person is present if feasible during the visit. Similarly, consent to share personal information: normally, we ask the tenant before sharing details with, say, a charity that could help them. But if they cannot consent, we only share what is necessary and lawful, again often involving their official representative to make that call. Every time we override the need for the tenant's own consent due to incapacity, we record the justification (e.g. "tenant lacks Capacity for this decision, sharing info with social services under vital interests/safeguarding") to maintain transparency and accountability.
- **Record-Keeping:** We maintain a confidential record on each tenant's file regarding any mental Capacity issues and the arrangements in place. This includes copies of referral information about Capacity, notes of discussions with social workers or family about Capacity, documentation of any best interest decisions made that involve Harbour Light (with date and who was consulted), and details of attorneys or deputies (with contact info and scope of authority). We flag these records in our housing management system so that any staff accessing the account are aware of any special considerations (e.g., "Tenant lacks Capacity to understand arrears letters – contact Deputy for financial matters; do not send standard legal letters without liaison with support team"). These notes ensure continuity of understanding, especially if there are staff changes. All records will be kept in line with data protection requirements, and only accessible to staff who need to know. Periodically (at least annually, or sooner if we receive new info), we will review and update the tenant's Capacity status in our records – for instance, Capacity can improve (someone might regain Capacity after recovering from an illness), or there might be further decline – so our information should stay current.

5.6 Training and Awareness: Harbour Light will provide training or a briefing to all relevant staff on the basics of the Mental Capacity Act 2005 and this policy's procedures. New employees who will work directly with tenants must be introduced to these concepts during induction. Ongoing refresher training or workshops will be arranged, potentially in partnership with local experts (like inviting a social worker or safeguarding professional to explain best practice scenarios). Topics will include how to recognise when a tenant might lack Capacity, how to communicate effectively with someone who has cognitive impairments, and what the referral pathways are for getting help. We will also cover case studies or examples relevant to housing – e.g., how to handle a tenant with dementia who forgets to pay rent, or what to do if a tenant's mental health crisis raises Capacity issues. The goal is to equip our team with confidence in recognising, responding, and recording Capacity and consent issues (the "3 Rs") as recommended by the Housing Ombudsman. Furthermore, staff will be informed about related policies such as Safeguarding and Equality & Diversity, which intersect with this policy. Harbour Light encourages a learning culture – staff should feel free to ask questions and share experiences, so we continuously improve our approach. In addition to formal training, we will disseminate guidance materials (e.g.



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summaries of the MCA principles, flowcharts on what to do if concerned about Capacity) for quick reference. By investing in staff knowledge, we align with sector best practice, calling for training in areas like mental health, learning disabilities, and dementia for housing personnel, ensuring our team is prepared to meet the needs of our tenants.

5.7 Links to Safeguarding Procedures: This Mental Capacity and Consent Policy works hand-in-hand with Harbour Light's Safeguarding Policy (STW01). Whenever a tenant's lack of Capacity either results from or leads to a safeguarding concern (for example, self-neglect, potential abuse, or inability to protect themselves), staff must invoke the safeguarding procedure. This includes immediate actions if there is urgent risk (such as contacting emergency services if a tenant is in immediate danger) and following the steps for reporting to the local Safeguarding Adults team. As noted in section 5.5, lack of Capacity may allow us to share information without consent if it's necessary to prevent harm, and the Safeguarding Policy provides further guidance on confidentiality and information sharing in those contexts. Staff should remember that a tenant who cannot make certain decisions might still express their wishes and feelings; even if we have to override their refusal (for instance, they might not understand why a repair is critical and say "no" when it really must be done), we should still involve them as much as possible and be compassionate in our approach. Any safeguarding plan that is developed for a tenant will likely involve multi-agency input – our role is to contribute as the housing provider (for example, providing safe accommodation, monitoring tenancy-related issues, and informing the team of any housing developments). By coordinating closely with social workers, healthcare providers, and possibly the tenant's family, we aim to ensure the tenant remains as safe and supported as possible in their home. We also recognise that sometimes the outcome of a safeguarding process might be a best-interests decision that the tenant should move to a different form of accommodation (like residential care) due to the inability to live independently. If that occurs, Harbour Light will work sensitively to facilitate the transition (for example, not enforcing tenancy obligations that the tenant can't meet, waiving notice periods if needed, etc.) in line with the safeguarding plan and Court of Protection decisions. Our primary concern is the well-being and dignity of the tenant throughout any such process.

In summary, Harbour Light recognises capacity-related issues affecting landlord decisions, makes appropriate adjustments, records relevant concerns and uses existing Support Company and safeguarding channels. It does not commission professional capacity assessments, provide care or transfer its landlord responsibilities to care and support organisations. Significant or disputed tenancy decisions require proportionate consideration of the available evidence and, where needed, legal advice.

Review and Updates

This policy will be reviewed in accordance with its final Board-approved review cycle, or earlier following a relevant change in law, regulation or Harbour Light's practice. The Estate Operations Manager will coordinate a proposed review for Chief Executive and Board consideration. Any subsequent amendments must follow the organisation's document-control and approval arrangements. Until approved, this version 1.0 is a Board consideration draft and must not be described or published as an approved policy.

Approval status: Approved.

Effective date: 12th October 2026.

Next review due: 12th October 2029 or sooner in the event of legislation change.