

Mental Capacity Act Policy

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Introduction

The Anchor SENDfriendly Centre (TAS) is committed to upholding the rights of all students, including those aged 16+ to whom the Mental Capacity Act 2005 (MCA) applies. We recognize that some of our students may lack capacity to make specific decisions about their care, support, and education.

This policy outlines how TAS meets its legal obligations under the MCA while ensuring students are supported with dignity and respect. Our approach is based on the presumption that all students have capacity unless demonstrated otherwise, and that they should be supported to make their own decisions whenever possible.

This policy complements our Behaviour Policy, SEND and Inclusion Policy, Positive Handling Policy, and Safeguarding and Child Protection Policy.

Legal Framework

This policy has been developed with reference to:

- Mental Capacity Act 2005 and Code of Practice
- Deprivation of Liberty Safeguards (DoLS)
- Liberty Protection Safeguards (forthcoming replacement for DoLS)
- Children and Families Act 2014
- Equality Act 2010
- SEND Code of Practice 0-25 years

Core Principles

TAS Centre adheres to the five statutory principles of the Mental Capacity Act:

1. **Presumption of capacity:** Every person aged 16+ is presumed to have capacity to make their own decisions unless it is established that they lack capacity.

Example: James, a 17-year-old student with autism, should be presumed able to decide what activities he wants to participate in during enrichment time, even if he communicates differently. Staff should not assume he cannot make this choice just because he has autism.

2. **Supporting decision-making:** All practicable steps must be taken to help a person make their own decision before they are treated as unable to make it.

Example: Aisha, a 19-year-old student with learning disabilities, needs to decide whether to participate in a community work placement. Staff should provide information in simple language, use visual supports, give her time to process, and try different times of day when she might be more alert before concluding she cannot make this decision.

3. **Right to make unwise decisions:** A person is not to be treated as unable to make a decision merely because they make an unwise decision.

Example: Michael, an 18-year-old student, decides to spend all his personal allowance on video games rather than saving for clothes that staff think he needs. If Michael understands the consequences of his choice, this "unwise" decision alone does not mean he lacks capacity.

4. **Best interests:** Any act done or decision made for a person who lacks capacity must be done in their best interests.

Example: Sara, a 20-year-old student with profound learning disabilities, lacks capacity to decide about taking medication for seizures. The decision to administer medication is made considering her medical needs, comfort, previous reactions to medication, and consulting with family members who know her well.

5. **Least restrictive option:** Before an act is done or a decision is made, regard must be had to whether the purpose can be achieved in a way that is less restrictive of the person's rights and freedom.

Example: Raj, a 16-year-old student who lacks capacity to understand road safety, needs to be kept safe during community visits. Rather than preventing him from going into the community altogether (most restrictive), staff implement a graduated support plan where he first practices road safety with 1:1 support, then with supervision from a distance, working toward greater independence while maintaining safety.

Roles and Responsibilities

Headteacher/Senior Leaders

- Overall responsibility for policy implementation
- Ensuring adequate resources for MCA compliance
- Reviewing and approving the policy

Designated MCA Lead

- Day-to-day guidance on MCA matters
- Coordinating best interests meetings
- Monitoring compliance with the policy
- Maintaining records of capacity assessments

SENCO

- Incorporating MCA considerations into EHCPs for students 16+
- Supporting capacity assessments related to education decisions
- Ensuring appropriate educational support for students who lack capacity

Teaching and Support Staff

- Awareness of the MCA principles
- Supporting students to make their own decisions
- Recognizing when capacity assessments may be needed
- Implementing best interests decisions

PBS Practitioner

- Incorporating MCA considerations into functional behaviour assessments
- Ensuring behaviour support plans consider MCA requirements
- Advising on least restrictive approaches

Assessing Capacity

When to Assess Capacity

- When there is reason to believe a student aged 16+ may lack capacity for a specific decision
- When an important decision needs to be made regarding care, support, or education
- When a restrictive practice is being considered

The Two-Stage Test

1. **Diagnostic Test:** Is there an impairment of, or disturbance in the functioning of, the person's mind or brain?
 - This may include learning disability, autism, dementia, mental health conditions, or temporary factors like medication effects
2. **Functional Test:** Is the impairment or disturbance sufficient that the person lacks the capacity to make a particular decision?
 - A person lacks capacity if they cannot:
 - Understand information relevant to the decision
 - Retain that information long enough to make the decision
 - Use or weigh that information as part of the decision-making process
 - Communicate their decision by any means

Key Principles of Assessment

- Capacity assessments are decision-specific, not general assessments
- Capacity can fluctuate - assessments are time-specific
- Assessments should identify what support might enable the person to make their own decision
- The person conducting the assessment should be carried out by professionals who have the appropriate training and expertise in assessing a student's ability to make decisions, this may include: Educational Psychologists, School Nurses or Medical Professionals, SENCO, Social Workers or External Specialists
- All assessments must be documented with date, specific decision being assessed, and conclusion

Best Interests Decisions

When a student lacks capacity for a specific decision, we must act in their best interests by:

Best Interests Checklist

- Not making assumptions based solely on age, appearance, condition or behaviour
- Encouraging participation in the decision-making process
- Identifying all relevant circumstances
- Considering if the person might regain capacity
- Considering their past and present wishes, feelings, beliefs, and values
- Consulting family members, carers and other relevant people

Best Interests Meetings

For significant decisions, a best interests meeting should include:

- The student (as much as possible)
- Family members or carers
- Relevant professionals (teachers, therapists, healthcare providers)
- Independent Mental Capacity Advocate (IMCA) where appropriate

Resolving Disagreements

If there are disagreements about a student's best interests:

- Further discussions should be facilitated to reach consensus
- Second opinions may be sought
- Mediation may be used
- Advice from the local authority MCA lead may be sought

Behaviour Support and MCA

Integration with Positive Behaviour Support

For students aged 16+ who may lack capacity:

- Functional Behaviour Assessments will consider capacity for relevant decisions
- Positive Behaviour Support plans will be developed within the MCA framework
- Strategies will represent the least restrictive options

- Plans will be regularly reviewed

Consent to Behaviour Support Strategies

- For students with capacity: Informed consent will be sought
- For students lacking capacity: Best interests decision-making process will be followed

Advance Planning

Where possible, advance planning will be undertaken with students while they have capacity:

- Discussing preferences for future behaviour support
- Recording preferences for times of crisis
- Identifying trusted people to consult

Restrictive Practices and DoLS

Restrictive Practices

May include:

- Physical restraint (as outlined in our Positive Handling Policy)
- Environmental restrictions (e.g., locked doors)
- Close supervision limiting privacy or independence
- Medication used primarily for behaviour management

Deprivation of Liberty

A deprivation of liberty occurs when:

- The student is under continuous supervision and control
- The student is not free to leave
- The arrangements are imputable to the state

Deprivation of Liberty Safeguards (DoLS)

For students aged 18+ who lack capacity and whose care arrangements amount to a deprivation of liberty:

- The Centre will identify potential deprivations of liberty
- The Centre will apply to the local authority for authorization
- Authorizations will be reviewed regularly

- Less restrictive alternatives will be continuously explored

Team Teach and MCA

As outlined in our Positive Handling Policy, when using physical interventions with students lacking capacity:

- Must be in the student's best interests
- Must be the least restrictive option
- Must be proportionate to the identified risk
- Must be documented with clear reasoning

Advocacy and Representation

Independent Mental Capacity Advocate (IMCA)

An IMCA must be appointed when:

- A decision concerns serious medical treatment or a change of accommodation
- The student lacks capacity to make the decision
- There are no family or friends appropriate to consult

The IMCA will:

- Represent and support the student who lacks capacity
- Ascertain the student's wishes, feelings, beliefs, and values
- Identify alternative courses of action
- Challenge decisions where necessary

Documentation Requirements

TAS Centre will maintain records of:

- Capacity assessments
- Best interests decisions
- DoLS applications and authorizations
- Use of restrictive practices

Records will be:

- Stored securely in line with data protection legislation

- Accessible to appropriate staff members
- Shared with other agencies only with appropriate consent or legal basis

Staff Training

Training Requirements

All staff working with students aged 16+ will receive training appropriate to their role:

All Staff

- The five principles of the MCA
- Supporting decision-making
- Recognizing when capacity assessments may be needed
- Understanding best interests

Key Staff (additional training)

- Conducting capacity assessments
- Best interests decision-making
- DoLS procedures

Training Schedule

- Initial MCA training during induction for new staff
- Refresher training provided annually
- Records of all MCA training maintained

Policy Review

This policy will be reviewed annually by the Senior Leadership Team and approved by the CEO.

The review will consider:

- Updates to reflect changes in legislation or guidance
- Feedback from staff, students, and families
- Analysis of capacity assessments and best interests decisions

Date: March 2025	Review: March 2026
Date:	Review:
Date: March 2025	Review: March 2026