

# Policy MCA

<b>Approver</b>	Senior Management Team
<b>Policy</b>	Mental Capacity Act
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## 1. Introduction.

- 1.1. AreYou - Training and Consultancy strives to provide services which are responsive to the individual needs of each person. On this basis, we will strive to maximise the independence and self-advocacy of all our people, operating from a starting assumption that each individual has capacity to make decisions unless evidence to the contrary within the parameters of the Mental Capacity Act (2005) through Initial Assessment and/or consultation with other professional, and ensuring that consent is sought and given with respect to all aspects of their time with us.

## 2. Aims

- 2.1. To identify the key aspects of the Mental Capacity Act (2005) in relation to our attendees.

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- 2.2. To clarify our responsibilities to facilitate people in maximising their self-advocacy and ensuring all appropriate support to achieve this.
- 2.3 To ensure that an individual's consent is paramount in all situations.

AreYou - Training and Consultancy will:

- 2.4 Assume a student has capacity with regard to the decisions and choices presented to them.
- 2.5 Take a decision-specific approach to capacity and consent.
- 2.6 Ensure that the circumstances for making a decision are right for the individual.
- 2.7 Acknowledge that, in the judgment of staff/carers/family, a person may make an 'unwise decision', but staff will still respect and support it, provided it does not place the individual or others at risk of harm.
- 2.8 Do Not lead through emphasis or intonation when presenting someone with a choice.
- 2.9 Only have an involvement in assessing capacity within the remit of decisions relating to their time with us, unless invited to contribute otherwise e.g. at external meetings.
- 2.10 Ensure that key staff involved in assessing capacity have received training on the Mental Capacity Act and suitable assessment strategies.
- 2.11 Strive to maximise the opportunities for people to advocate for themselves.
- 2.12 Maximise the awareness of opportunities for individuals through the planning of sessions.
- 2.13 Work in the best interests of the individual and in partnership with all appropriate agencies in the event that a person's capacity is in question with regard to a specific decision affecting them or their circumstances.
- 2.14 Ensure that when 'appropriate help' with decision making is given, it is someone who the person is familiar and comfortable with.
- 2.15 Ensure the individual (or, where the student does not have capacity, their best placed advocate) has consented to attending and applying to engage with our services.
- 2.16 Respect a person's decision if they express a wish to leave us at any time, ensuring that they can do so safely and providing their concerns have been discussed and attempts made to resolve these. If there are safeguarding concerns these should be reported to the Designated Safeguarding Lead as per our relevant policy.
- 2.17 Always gain a person's consent for the taking and use of images and video in different forms and media. Consent will only be overruled where it has been evidenced that an individual does not have capacity and/or it is deemed by their parent/carer or best-placed advocate that the use of any images will create a safeguarding risk or pose another form of significant threat to their wellbeing.
- 2.18 Have due regard to Deprivation of Liberty Safeguards. This is a safeguard for people who lack capacity to make decisions regarding their own safety. We will provide a safe environment for the diverse needs of all people, ensuring the safety and due liberty of them all as individuals.

## APPENDIX A: THE MENTAL CAPACITY ACT 2005

What is Mental Capacity?

The Mental Capacity Act (2005) provides the legal framework for acting and making decisions on behalf of an adult (aged 16 or over) who lacks the mental capacity to make particular decisions for themselves.

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The Mental Capacity Act (2005) Code of Practice makes the following definition:  
“Mental capacity is the ability to make a decision.

- This includes the ability to make a decision that affects daily life – such as when to get up, what to wear or whether to go to the doctor when feeling ill – as well as more serious or significant decisions.
- It also refers to a person’s ability to make a decision that may have legal consequences – for them or others. Examples include agreeing to have medical treatment, buying goods or making a will.”

The Five Statutory Principles of the Mental Capacity Act

1. A person must be assumed to have capacity unless it is established that they lack capacity.
2. A person is not to be treated as unable to make a decision unless all practicable steps to help her/him to do so have been taken without success.
3. A person is not to be treated as unable to make a decision merely because he/she makes an unwise decision.
4. An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in her/his best interests.
5. Before the act is done, or the decision is made, regard must be given to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person’s rights and freedom of action.

The statutory principles aim to:

- protect people who lack capacity, and
- help them take part, as much as possible, in decisions that affect them. They aim to assist and support people who may lack capacity to make particular decisions, not to restrict or control their lives (in line with the Human Rights Act 1995).

Assessing Capacity to Make a Decision

The Code of Practice states that: “The starting point must always be to assume that a person has the capacity to make a specific decision. Some people may need help to be able to make or communicate a decision. But this does not necessarily mean that they lack capacity to do so. What matters is their ability to carry out the processes involved in making the decision – and not the outcome.”

Assessing Capacity

Anyone assessing someone’s capacity to make a decision for themselves should use the two-stage test of capacity:

- Does the person have an impairment of the mind or brain, or is there some sort of disturbance affecting the way their mind or brain works? (It doesn’t matter whether the impairment or disturbance is temporary or permanent.)
- If so, does that impairment or disturbance mean that the person is unable to make the decision in question at the time it needs to be made?

The Code of Practice lists people with learning disabilities as having the potential to fall into the above criteria. However, it also acknowledges that these people may regain or develop capacity in

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the future: “a person with learning difficulties may learn new skills or be subject to new experiences which increase their understanding and ability to make certain decisions.”

## Safeguards Provided by the Act in Assessing Someone’s Capacity

An assessment that a person lacks capacity to make a decision must never be based simply on:

- their age
- their appearance (including physical characteristics of certain conditions e.g. features linked to Down’s syndrome or muscle spasms caused by cerebral palsy)
- assumptions about their condition (including physical disabilities, learning difficulties and disabilities), or
- any aspect of their behaviour (including shouting or gesticulating and withdrawn behaviour e.g. talking to oneself/avoiding eye contact).

## Support with Decision Making

The Code of Practice recognizes that providing appropriate help with decision-making should form part of care planning processes for people receiving health or social care services and, by virtue, learning providers and a key example of this is Person Centred Planning for people with learning disabilities. Key factors to establish are:

- Does the person have all the relevant information they need to make a particular decision?
- If they have a choice, have they been given information on all the alternatives?
- Could information be explained or presented in a way that is easier for the person to understand (for example, by using simple language or visual aids)?
- Have different methods of communication been explored if required, including non-verbal communication?
- Could anyone else help with communication (for example, a family member, support worker, interpreter, speech and language therapist or advocate)?
- Does the time of day suit the person?
- Is there a location where they feel most at ease?
- Could the decision be deferred to a time that best suits the person?