Mental Capacity Act 2005 Policy and Procedure

Date: August 2026

Date for review: August 2027

Author: Jenny Mills

Important contacts

ROLE / ORGANISATION	NAME	CONTACT DETAILS
Director / Designated Safeguarding Lead	Jenny Mills	jenny.mills@thelearningsanctuary.co.uk

Policy statement. The Learning Sanctuary is committed to respecting the autonomy, rights, dignity and choices of every person it supports. This policy sets out how staff will apply the Mental Capacity Act 2005 (MCA) when supporting people to make decisions, assessing mental capacity where there is a genuine reason to doubt it, and making or contributing to decisions in a person's best interests when they lack capacity for a specific decision.

North Yorkshire alignment. This policy has been written to reflect the Mental Capacity Act 2005 Resource and Practice Toolkit used within the North Yorkshire multi-agency safeguarding arrangements, alongside North Yorkshire Council's published Mental Capacity Act guidance. It must be read with the Mental Capacity Act 2005, the MCA Code of Practice, current case law and relevant local procedures. The external resource is updated periodically; where law or current North Yorkshire guidance changes, the current legal/local requirement takes precedence.

Important: The MCA applies to people aged 16 and over. Capacity is decision-specific and time-specific. A diagnosis, disability, communication difference, behaviour, appearance or an unwise decision must never be treated as proof that a person lacks capacity.

1. PURPOSE AND SCOPE

This policy applies to directors, employees, agency staff, volunteers, students on placement and any other person working on behalf of The Learning Sanctuary who may support a person aged 16 or over to make decisions.

The policy is intended to ensure that:

- people are presumed to have capacity unless it is established otherwise;
- all practicable support is provided before concluding that a person cannot make a decision;
- people are free to make decisions others may consider unwise;
- any act or decision made for a person who lacks capacity is in that person's best interests;

- any restriction is necessary, proportionate and the least restrictive option available;
- capacity assessments and best-interests decisions are clearly recorded and reviewed;
- staff recognise when specialist advice, advocacy, safeguarding action or legal authorisation is required.

2. LEGAL AND PRACTICE FRAMEWORK

This policy is informed by:

- Mental Capacity Act 2005;
- Mental Capacity Act 2005 Code of Practice;
- Care Act 2014 and Care and Support Statutory Guidance;
- Human Rights Act 1998, including respect for private and family life and liberty;
- Equality Act 2010;
- Data Protection Act 2018 and UK GDPR;
- Safeguarding Vulnerable Groups Act 2006, where relevant;
- current North Yorkshire Council and North Yorkshire Safeguarding Adults Board guidance;
- the Mental Capacity Act 2005 Resource and Practice Toolkit used within the North Yorkshire multi-agency procedures;
- current law and guidance on restraint, restrictive practice, deprivation of liberty, Court of Protection, attorneys and deputies.

Practice resource: The North Yorkshire-linked MCA toolkit is a practice aid, not a substitute for the Act, regulations or Code of Practice. Staff must seek management or legal advice where a decision is complex, disputed or may significantly restrict a person's rights.

3. THE FIVE STATUTORY PRINCIPLES

3.1 Presumption of capacity

Every person must be assumed to have capacity unless it is established that they lack capacity for the particular decision at the particular time.

3.2 Support to make decisions

A person must not be treated as unable to make a decision unless all practicable steps to help them do so have been taken without success.

3.3 Unwise decisions

A person must not be treated as lacking capacity merely because they make a decision that others regard as unwise, risky or unconventional.

3.4 Best interests

Any act done or decision made for or on behalf of a person who lacks capacity must be done or made in their best interests.

3.5 Least restrictive option

Before acting or making a decision, staff must consider whether the purpose can be achieved in a way that is less restrictive of the person's rights and freedom of action.

4. SUPPORTING PEOPLE TO MAKE THEIR OWN DECISIONS

Supported decision-making is the starting point. Staff should adapt the way information is presented and the environment in which a decision is made so the person has the best possible opportunity to decide for themselves.

Practicable support may include:

- using plain English, Easy Read, pictures, objects of reference, demonstration, symbols, signing or other communication methods;
- breaking a decision into smaller steps and checking understanding one part at a time;
- offering a limited number of meaningful choices where this helps understanding without artificially restricting options;
- choosing the best time of day and a familiar, calm environment;
- allowing additional processing time and repeating information where appropriate;
- involving a trusted family member, carer, advocate or communication specialist with the person's agreement where possible;
- addressing pain, anxiety, sensory overload, hunger, tiredness or other temporary factors that may affect decision-making;
- postponing a non-urgent decision if capacity is likely to improve;
- making reasonable adjustments for disability, communication needs, hearing, vision, language or neurodivergence.

Staff must record significant adjustments used to support decision-making, particularly where a formal capacity assessment is required.

5. WHEN A MENTAL CAPACITY ASSESSMENT MAY BE NEEDED

Capacity should not be assessed routinely simply because a person has a disability or receives support. An assessment is required when there is a genuine reason to doubt the person's capacity to make a specific decision and that decision needs to be made.

Possible triggers may include:

- the person appears unable to understand, retain, use or weigh relevant information, or communicate a decision;

- there is a significant change in cognition, presentation or functioning;
- the person repeatedly makes a decision that appears inconsistent with their previously expressed wishes and there is reason to suspect impairment or disturbance of mind or brain;
- the decision carries serious consequences and there is evidence that the person may not be able to make it;
- there is disagreement about whether the person can decide, or a safeguarding concern raises questions about coercion, executive functioning or capacity.

Not a trigger by itself: Age, diagnosis, learning disability, autism, mental illness, appearance, communication style, challenging behaviour, substance use, refusal of support or an unwise decision are not, by themselves, evidence of incapacity.

6. ASSESSING MENTAL CAPACITY

The assessment must relate to a clearly defined decision and the time the decision needs to be made. The person assessing capacity should be the person responsible for the decision or intervention where appropriate, but complex or high-impact decisions may require involvement from a social worker, health professional, psychologist, speech and language therapist, legal adviser or other specialist.

6.1 The two-stage test

Stage 1 - Is there an impairment of, or disturbance in the functioning of, the person's mind or brain?

This may be permanent or temporary and can arise from many causes. The assessment must identify the relevant impairment or disturbance; a label or diagnosis alone is insufficient.

Stage 2 - Because of that impairment or disturbance, is the person unable to make the specific decision when it needs to be made?

A person is unable to make the decision if they cannot do one or more of the following:

- understand the 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.

6.2 Relevant information

Relevant information will depend on the decision. It should normally include the nature of the decision, the reasonably foreseeable consequences of deciding one way or

another, and the reasonably foreseeable consequences of not deciding or refusing the proposed option. Only information genuinely relevant to the decision should be tested.

6.3 Standard of proof and recording

A finding that a person lacks capacity must be based on the balance of probabilities. The record must show the specific decision, the support provided, evidence relating to both stages of the test, the person's responses, the conclusion, who made the assessment and when, and any review date or circumstances that should trigger reassessment.

6.4 Fluctuating or temporary capacity

Where capacity may fluctuate or improve, non-urgent decisions should be delayed where reasonably possible so the person can decide for themselves. Records should identify factors associated with better or poorer decision-making and the best time or conditions for future decisions.

7. WHO IS THE DECISION-MAKER?

The identity of the decision-maker depends on the decision. For routine support, the member of staff responsible for the act may be the decision-maker. For medical treatment, the relevant clinician will normally be the decision-maker. For local authority care and support decisions, the responsible local authority practitioner may be the decision-maker. Attorneys or deputies may have authority for particular decisions within the scope of their legal powers.

The Learning Sanctuary will not make decisions outside its authority. Where a decision is complex, disputed, involves significant welfare or financial consequences, or may require Court of Protection involvement, the Director will seek advice from the relevant professional or legal service.

8. BEST INTERESTS DECISION-MAKING

If a person lacks capacity for the particular decision, any act or decision on their behalf must be in their best interests. Best interests must not be based merely on the person's age, appearance, diagnosis, behaviour or on what would be most convenient for staff.

The decision-maker must, so far as relevant:

- encourage and enable the person's participation as fully as possible;
- consider all relevant circumstances;
- consider whether the person is likely to regain capacity and whether the decision can wait;
- identify the person's past and present wishes and feelings, including any relevant written statement;

- consider beliefs and values that would be likely to influence the person's decision;
- consider other factors the person would be likely to consider;
- consult appropriate family members, carers, attorneys, deputies, advocates and relevant professionals where lawful and appropriate;
- avoid assumptions based on age, condition, behaviour or appearance;
- consider options and choose the least restrictive effective option.

For serious or contested decisions, a formal best-interests meeting should be considered. The rationale, options considered, consultation, disagreement and final decision must be clearly recorded.

9. EVERYDAY DECISIONS AT THE LEARNING SANCTUARY

Many decisions made during ordinary attendance are everyday decisions. Staff should promote choice and independence and avoid unnecessary formal assessments. However, where there is a genuine reason to doubt capacity for a specific decision with meaningful consequences, the MCA process applies.

Food, drinks and activities

Offer real choices in an accessible way and respect refusals unless there is a separate immediate safety issue requiring escalation.

Animal-based activities

Explain the nature of the activity, relevant foreseeable risks and available alternatives in a way the person can understand. Use existing risk assessments and support plans without assuming incapacity because support is needed.

Community access and travel

Support the person to understand relevant safety information and choices. Restrictions must be individually justified and not imposed solely for staff convenience.

Personal care and medication

Where these are within the service's role, staff must follow consent, medication and care procedures. Repeated refusal or concern about capacity must be escalated to the appropriate decision-maker.

Money and possessions

Staff must not assume authority over a person's finances. Any support with money must follow the person's wishes where they have capacity or the lawful authority/best-interests process where they do not.

Photography, social media and information sharing

Consent must be decision-specific and meaningful. Capacity to consent should not be assumed absent because a person has SEND.

10. LASTING POWERS OF ATTORNEY, DEPUTIES AND ADVANCE DECISIONS

Where relevant, staff should establish whether the person has a registered Lasting Power of Attorney (LPA), a Court of Protection deputy, or an Advance Decision to Refuse Treatment. Copies or evidence of authority should be obtained only where necessary and stored securely.

- An attorney or deputy can act only within the scope of their legal authority.
- A health and welfare attorney can generally act only when the donor lacks capacity for the particular decision.
- A valid and applicable Advance Decision to Refuse Treatment can be legally binding on health professionals.
- Advance statements of wishes, feelings, beliefs and preferences are not the same as an Advance Decision but should be considered in best-interests decisions.
- If there is doubt about validity, scope, conflict or legal authority, staff must seek appropriate professional or legal advice.

11. ADVOCACY AND THE INDEPENDENT MENTAL CAPACITY ADVOCATE (IMCA)

The Learning Sanctuary will support people to have their voice heard. Family, friends or independent advocates may support decision-making where appropriate and with due regard to confidentiality and the person's wishes.

An Independent Mental Capacity Advocate (IMCA) is a statutory safeguard for certain decisions where a person lacks capacity and meets the legal criteria. The Learning Sanctuary will not determine eligibility alone where the decision sits with another body; it will alert the responsible local authority or NHS decision-maker where an IMCA may be required and cooperate with the advocate.

12. RESTRAINT, RESTRICTIVE PRACTICE AND LEAST RESTRICTIVE SUPPORT

The Learning Sanctuary aims to prevent the need for restraint and restrictive practice through person-centred planning, positive relationships, communication support, environmental adjustment, choice and proactive risk management.

Where a person lacks capacity, restraint can only be considered within the legal framework and must be necessary to prevent harm and proportionate to the likelihood and seriousness of that harm. Staff must never use restraint as punishment, for convenience, to enforce compliance or because of a lack of staffing.

Any significant restriction or restraint must be recorded, reviewed and escalated in line with the relevant policy. Repeated or cumulative restrictions must be considered together, not in isolation.

13. DEPRIVATION OF LIBERTY

A package of care or support may, in some circumstances, amount to a deprivation of liberty. This is a specialist and developing area of law. Staff must not assume that a restriction is lawful simply because it is intended to keep a person safe or is included in a care plan.

If staff are concerned that the level, duration or combination of supervision, control or restrictions may amount to a deprivation of liberty, they must inform the Director immediately. The Director will seek advice from the person's social worker, placing authority and/or relevant legal or safeguarding professionals and ensure that the correct legal authorisation route is considered.

Current guidance: The North Yorkshire-linked MCA toolkit was updated in 2026 in relation to identifying deprivation of liberty. Because the legal position can change through case law, staff must use the current North Yorkshire procedure and seek advice rather than relying on an old checklist.

14. MENTAL CAPACITY AND SAFEGUARDING

A lack of capacity can increase vulnerability but does not itself mean that abuse or neglect has occurred. Equally, having capacity does not remove a person's right to safeguarding support. Safeguarding and mental capacity processes may need to run alongside one another.

Staff must:

- consider whether coercion, undue influence, fear, control or exploitation may be affecting the person's ability to make or express a free decision;
- follow The Learning Sanctuary Safeguarding Adults Policy where abuse, neglect or exploitation is suspected;
- take immediate action where there is an urgent risk to life or serious harm;
- avoid using a capacity assessment as a substitute for safeguarding action;
- recognise that ill-treatment or wilful neglect of a person who lacks capacity can constitute a criminal offence.

15. EMERGENCY AND URGENT SITUATIONS

In an emergency, staff should provide necessary immediate assistance within their competence and role, call emergency services where required, and act to prevent serious harm. Where there is time, the MCA principles still apply. Any emergency action involving significant restriction, treatment or safeguarding intervention must be reported to the Director and recorded promptly.

16. CONSENT, REFUSAL AND RISK

A person with capacity is entitled to consent to or refuse support, even where staff or family members disagree with the decision. Staff should make sure the person has relevant information, understands foreseeable consequences and is free from coercion. The person's decision should then be respected, subject to any separate legal duties to protect others or respond to safeguarding or emergency concerns.

Positive risk-taking should be supported through proportionate risk assessment rather than unnecessary restriction. Capacity and risk are different questions: a person may understand and choose to take a risk.

17. RECORDING AND INFORMATION GOVERNANCE

Records relating to capacity and best interests must be factual, respectful and proportionate. They should include, where applicable:

- the specific decision and why it needs to be made;
- why there was reason to doubt capacity;
- the support and adjustments offered;
- the two-stage capacity assessment and evidence for the conclusion;
- the person's own words, wishes, feelings, beliefs and values where possible;
- consultation with family, carers, advocates, attorneys, deputies or professionals;
- options considered, risks and benefits, and the least restrictive alternative;
- the best-interests decision and rationale;
- any disagreement, escalation, legal advice, safeguarding action or review date.

Information will be stored and shared in accordance with data protection law, confidentiality requirements and safeguarding information-sharing principles.

18. ROLES AND RESPONSIBILITIES

18.1 Director

- ensure this policy is implemented, reviewed and made available to staff;
- promote a culture of supported decision-making, rights and least restrictive practice;
- ensure staff receive appropriate MCA training and supervision;

- support escalation of complex capacity, best-interests, restraint or deprivation-of-liberty matters;
- liaise with placing authorities, social workers, health professionals, advocates, safeguarding teams and legal advisers as necessary;
- ensure significant decisions and incidents are reviewed for learning.

18.2 All staff and volunteers

- assume capacity unless there is evidence to the contrary;
- support people to make their own decisions and communicate choices;
- recognise the limits of their role and competence;
- record and report concerns promptly;
- follow agreed support plans, risk assessments and lawful best-interests decisions;
- challenge unnecessary or disproportionate restrictions;
- seek guidance whenever uncertain.

19. TRAINING, SUPERVISION AND COMPETENCE

Staff whose roles involve supporting people aged 16 or over will receive MCA awareness appropriate to their responsibilities. Staff expected to carry out or contribute to capacity assessments or best-interests decisions will receive more detailed training and supervision. Training will address the five principles, supported decision-making, the two-stage test, best interests, recording, advocacy, restraint, deprivation of liberty and the interface with safeguarding.

20. DISAGREEMENT, ESCALATION AND LEGAL ADVICE

Disagreement about capacity or best interests should be addressed promptly and respectfully. Staff should first check whether the person has been fully supported to decide, whether the assessment is decision-specific, whether relevant people have been consulted and whether the least restrictive option has been considered.

Where disagreement remains, the Director will seek input from the responsible professional or placing authority and may seek mediation, safeguarding advice or legal advice. Serious unresolved disputes may require an application to the Court of Protection by the appropriate party.

21. MONITORING AND REVIEW

This policy will be reviewed at least annually and sooner if there is a significant change in legislation, statutory guidance, case law, North Yorkshire procedures, service delivery or learning from an incident. Capacity assessments and best-interests decisions will be reviewed whenever circumstances change or new information becomes available.

22. KEY REFERENCES AND LOCAL PRACTICE RESOURCES

- Mental Capacity Act 2005.
- Mental Capacity Act 2005 Code of Practice.
- North Yorkshire Council - The Mental Capacity Act.
- North Yorkshire Safeguarding Adults Board / Joint Multi-Agency Safeguarding Adults Policy and Procedures.
- The Mental Capacity Act 2005 Resource and Practice Toolkit (tri.x), as linked from the North Yorkshire safeguarding procedures.
- Care Act 2014 and Care and Support Statutory Guidance.
- Human Rights Act 1998.
- Equality Act 2010.

Staff should use the current online versions of North Yorkshire and national resources because these may be updated between formal reviews of this policy.

APPENDIX 1 - MENTAL CAPACITY ASSESSMENT RECORD

FIELD	RECORD
Person's name / DOB	
Assessor / role / date	
Specific decision to be made	
Why is there a reason to doubt capacity for this decision?	
What practicable steps were taken to support the person to decide?	
Stage 1: What impairment or disturbance in the functioning of mind or brain is present?	
Relevant information the person needs to understand	
Can the person understand the relevant information? Evidence:	
Can the person retain the relevant information long enough to decide? Evidence:	

Can the person use or weigh the relevant information? Evidence:	
Can the person communicate a decision by any means? Evidence:	
Is any inability to decide caused by the impairment/disturbance? Explain:	
Outcome: Has capacity / Lacks capacity / Assessment inconclusive	
If capacity may improve or fluctuate, when/how should this be reviewed?	
Assessor signature / date	

APPENDIX 2 - SUPPORTED DECISION-MAKING CHECKLIST

☐ Have I clearly identified the specific decision?

☐ Have I presumed capacity at the outset?

☐ Have I explained the decision in a way the person can understand?

☐ Have I used the person's preferred communication method?

☐ Have I reduced unnecessary information and focused on what is relevant?

☐ Have I given enough processing time?

☐ Have I chosen the best time and environment?

☐ Have I addressed pain, anxiety, sensory needs, fatigue or distress?

☐ Would pictures, Easy Read, objects, demonstration or repetition help?

☐ Would a trusted supporter, interpreter, advocate or communication specialist help?

☐ Can the decision safely wait until the person is more able to engage?

☐ Have I avoided treating disagreement or an unwise decision as incapacity?

☐ Have I recorded the support provided and the person's response?

APPENDIX 3 - BEST INTERESTS DECISION RECORD

FIELD	RECORD
Person's name / DOB	
Decision-maker / role / date	
Specific decision	
Capacity assessment reference / date	
Can the decision wait for capacity to return? Why/why not?	
How was the person involved in the decision?	
Person's present wishes and feelings	
Known past wishes / written statements	
Beliefs and values relevant to the decision	

People consulted and their views	
Options considered	
Risks and benefits of each realistic option	
Least restrictive option considered	
Best-interests decision and rationale	
Any disagreement / escalation / legal advice	
Review date / trigger	
Decision-maker signature	

APPENDIX 4 - RESTRICTION / DEPRIVATION OF LIBERTY ESCALATION CHECK

This is an internal prompt only and is not a legal deprivation-of-liberty assessment. Where there is concern, current North Yorkshire guidance and professional/legal advice must be used.

☐ Is the person subject to continuous or very frequent supervision or control?

☐ Are they free to leave the setting or activity if they choose?

☐ Are doors, transport, community access, communication, possessions or relationships restricted?

☐ Is physical intervention, restraint, medication or other control used to prevent leaving or particular behaviour?

☐ Are restrictions imposed for significant periods or repeated across the day/week?

☐ Would the person be prevented from leaving if they attempted to do so?

☐ Has the person objected verbally, behaviourally or through a representative?

☐ Have all restrictions been considered cumulatively rather than one at a time?

☐ Is there a less restrictive way to achieve the legitimate safety aim?

☐ Has the Director been informed and has advice been sought from the responsible professional/placing authority?

Action / advice sought / outcome:

APPENDIX 5 - STAFF POLICY ACKNOWLEDGEMENT

I confirm that I have read and understood The Learning Sanctuary Mental Capacity Act 2005 Policy and Procedure. I understand my responsibility to support people to make their own decisions, to avoid assumptions about capacity, to follow the MCA principles and to seek advice when a decision is complex or outside my role.

Staff member name	
Role	
Signature	
Date	