



# Linden Lodge School

Provider of specialist education since 1903

Title:	Mental Capacity and Consent		
Type:	POLICY		
Review Cycle Frequency:	2 years		
Lead Staff:	Designated Safeguarding Lead		
Support:	Co-Headteachers, Deputy Head		
VERSION CONTROL:			
Version No	New document or reasons for revision	Agreed by	Date
1	Migration to new document version control system	Office	April 2021
2	Policy update	Office	Summer 2021
3	Policy update	Office	Autumn 2022
4	Policy update	Harri Ashworth	Autumn 2024
LINKED INTERNAL DOCUMENTS:			
<ul style="list-style-type: none"><li>• Medication Policy</li><li>• Safeguarding &amp; Child Protection Policy</li><li>• Touch, Physical Contact, Personal and Intimate Care Policy</li><li>• Supporting Pupils in Schools with Medical Conditions Policy</li><li>• Adult safeguarding policy</li></ul>			
LINKED EXTERNAL DOCUMENTS:			
<ul style="list-style-type: none"><li>• KCSiE (2024)</li><li>• Care Act (2014)</li><li>• Children's Act 1989</li></ul>			

### Equalities Statement:

We have carefully considered and analysed the impact of these policies on equality and the possible implications for people with protected characteristics, as part of our commitment to meet the Public Sector Equality Duty (PSED) requirement to have due regard the need to eliminate discrimination, advance equality of opportunity and foster good relations.

### Requests for Paper Copies:

If you require this policy in a different format e.g. print or braille please contact [Co-headteachers@lindenlodge.org.uk](mailto:Co-headteachers@lindenlodge.org.uk)

### Wellbeing statement of commitment

We are committed to providing a healthy working environment and improving the quality of working lives for all staff and students. The wellbeing strategy aims to support our mission, core values and freedom of thought and expression, freedom from discrimination and the recognition that our community is our greatest asset. For further information on our schools commitment to wellbeing, please see the Mental Health and Wellbeing Policy and Strategy document, or visit our school website.

### Introduction

Linden Lodge School is committed to providing outstanding educational opportunities for all our pupils and students. Our pupils are at the heart of our decision-making and our work is underpinned by the following Core Values:

- Respect for the individual
- Teamwork
- Solution focused approach
- Professionalism
- Positive thinking

This policy sets out Linden Lodge's understanding of and approach to supporting mental capacity and consent within the context of our provision. Linden Lodge aims to provide teaching and learning which is responsive to the individual needs of pupils/students. On this basis, Linden Lodge's approach is to maximise the independence and self-advocacy of all students, we have a starting assumption that each student has capacity to make decisions related to their learning unless evidenced to the contrary applying the guidance of the Mental Capacity Act (2005) (please see Appendix A for a summarised version), and ensuring that student consent is sought and given with respect according to the guidance..

Under the Children and Families Act 2014, a child becomes a young person and is deemed to have capacity once they reach the age of 16; this is the point at which parental rights under the law in relation to the young person's education pass to the young person. Therefore, this policy applies to all students aged 16 or over who attend a Linden Lodge provision. However, as a general principle it should be noted that

Linden Lodge will always respect the rights of the individual and will strive to support every pupil/student to express their needs and wishes, regardless of age or legal status.

## **Aims**

- To identify the key aspects of the Mental Capacity Act (2005) in relation to Linden Lodge students.
- To clarify Linden Lodge's responsibilities to support students to develop the ability to make choices, maximise their self-advocacy and ensure all appropriate support to achieve this.
- To ensure that a student's consent is considered and respected in all situations.

## **Policy Statement**

Linden Lodge will:

- assume a student has capacity with regard to the decisions and choices presented to them within Linden Lodge's provision
- take a decision-specific approach to capacity and consent
- ensure that the circumstances for making a decision are right for the individual student
- acknowledge that, in the judgment of staff, a student may make an 'unwise decision' but staff will still respect and support it, provided it does not place the student or others at risk of harm
- not lead a student, or apply influence, when presenting students with choices
- only have involvement in assessing a student's capacity within the remit of decisions relating to their learning and being at Linden Lodge's provision, unless invited to contribute otherwise e.g. at external best interest meetings
- ensure that key staff involved in assessing capacity have received training on the Mental Capacity Act and suitable assessment strategies
- provide frequent opportunities for all students to advocate for themselves
- reflect a student's dreams and aspirations through personalized programmes
- work in the best interests of the student, and in partnership with all appropriate agencies, in the event that a student's capacity is in question with regard to a specific decision affecting them or their circumstances
- ensure that when 'appropriate help' with decision making is given to a student,

it is someone who the student has chosen and who knows them well

- always gain a student's consent before undertaking any medical or therapeutic interventions – consent will be gained for each separate intervention. Where it has been specifically identified that a student lacks capacity with regard to granting permission for the administration of medical care, or has a level of language development which is not consistent with their being able to give informed consent, medical care will be administered with the student's best interest in mind and in accordance with professional advice and/or the student's best-placed advocate
- work in collaboration with a student where they are unhappy about essential interventions (e.g. personal care or emergency medical care) to achieve a level and mode of support that they are comfortable with
- ensure consent is gained from prospective students (or, where the student does not have capacity, their best-placed advocate) with regard to medical, therapeutic and other forms of assessment during any assessment days and/or initial assessment processes for Linden Lodge provision
- ensure the student (or, where the student does not have capacity, their best-placed advocate) has consented to attending and applying to attend Linden Lodge provision
- respect a student's decision if they express a wish to leave Linden Lodge provision 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 before a student leaves Linden Lodge provision
- always gain a student's consent for the taking and use of images and video material 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
- have due regard to Deprivation of Liberty Safeguards. This is a safeguard for people who lack capacity to make decisions regarding their own safety. Linden Lodge will provide a safe environment for the diverse needs of all its students, ensuring the safety and due liberty of them all as individuals. Linden Lodge will ensure that student choice and best interest is considered at all times and that decisions being made suit the needs of the student to which they pertain

## APPENDIX A: THE MENTAL CAPACITY ACT 2005

### What is Mental Capacity?

The Mental Capacity Act 2005 introduced statutory responsibilities which apply to everyone who is involved in the care, treatment, or support of people over the age of 16 living in England or Wales, who are unable to make a specific decision at a specific time for themselves.

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.

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
- 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**

A Mental Capacity Assessment is a test to determine whether an individual has the capacity to make a specific decision at the time in which the decision needs to be made. This could be small, day-to-day decisions such as what to wear, or larger, potentially life-changing decisions around health, housing or finances.

There is no set person who should assess an individual's capacity and the relevant person will depend on the specific decision that needs to be made at the specific time. The therapy team and education staff will work together to support this assessment if appropriate.

Support staff will have received Mental Capacity Training.

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 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 Mental Capacity Act works on the basis that capacity is decision specific, which means capacity should be determined in relation to a specific decision a person is being asked to make at a specific time. It is not possible for an individual to generally 'lack capacity'.

The Code of Practice recognises 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 and modes 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?

## **MCA and Safeguarding**

Adults have the right to make decisions regarding all aspects of their life unless a mental capacity assessment indicates that the adult is unable to make a specific decision. Decision-makers should then act in the best interests of the adult as described in the MCA 2005 Code of Practice.

Adults whose health conditions mean that they are unable to make decisions regarding critical day-to-day self-care activities such as food intake, personal care and accessing healthcare are especially vulnerable. All of those around them need to ensure that decisions are made in the best interests of the adult.

If an adult is unable to maintain their health and wellbeing without the assistance of others and there are concerns that decisions are not being made in the adult's best interests a MASH referral should be made.

## **Children and Young People Aged 16 to 17 Years**

Most of the MCA applies to those aged 16-17 who may lack capacity to make specific decisions at the time the decision needs to be made but there are three exceptions:

- Making a Lasting Power of Attorney
- Advance decisions to refuse treatment

- Making a Will

The MCA should be considered alongside the Children's Act 1989. There may also be situations when neither of these Acts provides an appropriate solution. In such cases it may be necessary to look to the powers available under the Mental Health Act 1983, or the High Court 's inherent powers to deal with cases involving young people. There are currently no specific rules for deciding when to use either the Children Act 1989 or the MCA, or when to apply to the High Court. I

Generally, a person with parental responsibility for a young person can consent to the young person receiving care or medical treatment where they lack capacity to make the specific decision for themselves at the time in which it needs to be made. However, healthcare professionals can carry out treatment or care for a young person who has been assessed as lacking capacity to make the specific decision if it is in their best interests without the consent of a person with parental responsibility. Healthcare professionals must act in the best interests of the young person, as they would for an adult, and must consult everyone who it is practical and appropriate to consult.

This would include those with parental responsibility. Regard should also be given to the young person's right to confidentiality, and only appropriate and relevant information should be shared and there may be times when it is not appropriate to consult with parents (for example if the young person does not want their parents involved, or where there have been concerns regarding abuse).

The MCA generally does not apply to those under the age of 16 except in the following circumstances:

- The Court of Protection can make decisions about a child's property or finances if the child lacks capacity to make such decisions and is unlikely to be able to make financial decisions when they reach the age of 18 under section 18(3).
- Offences regarding the ill-treatment or willful neglect of a person who lacks capacity can apply to victims under the age of 16 under section 44.

Linden Lodge will act to support all pupils appropriately and inline with guidance and recommendations.