



**Outcomes
First
Group.**

OptionsAutism

**Mental Capacity and Supporting
Choice Policy**

Hillingdon Manor School

MENTAL CAPACITY & SUPPORTING CHOICE POLICY**CONTENTS PAGE**

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1.0 INTRODUCTION

Outcomes First Group provides high-quality care, education and clinical support every day. We create happy places that are safe, friendly and supportive, so that we can be trusted to be doing the best for each person in our care.

This policy outlines the principles that underpin pupils being able to give consent and managing the risks associated with this. Staff must read and understand this policy. Line managers should ensure that staff members are aware of and understand this policy and any subsequent revisions. Regional Directors must also ensure that quality improvement action plans are continually revised and implemented.

This policy is developed in line with the relevant legal and regulatory requirements including the [Mental Capacity Act 2005](#), [Mental Health Act 2007](#), and [Human Rights 1998](#)

2.0 PRINCIPLES & DEFINITIONS

Outcomes First Group places great importance on respecting the individual's ability and desire to make decisions for themselves.

2.1 Mental Capacity

[Mental Capacity](#) is the ability to understand information and make decisions. An individual has the mental capacity to make their own decision if they understand the information given to them, they are able to retain that information, and able to weigh up that information to make an informed decision and communicate the decision they have made.

If a person is unable to understand the information given to them or if they are unable to retain the information given to them then they would be unable to make an informed decision. The person would, therefore, lack Mental Capacity.

2.2 Consent

Intimate Care Policy

The principle of consent is an important part of care ethics and international human rights law and involves the principle that a person must give their permission with regards to their care, treatment and support. For consent to be valid, however, it must be voluntary (made alone and unpressured) and informed (receipt of full information), and the person consenting must have the mental capacity to make the decision.

2.3 At all times, staff will uphold these basic principles and support pupils to:

- Where they are able, give valid consent to the care and support they receive;
- Understand and know how to change any decision about care and support that has been previously agreed;
- Understand how capacity can change and fluctuate.
- Be confident that their [Human Rights](#) are respected and taken into account.

In a life-threatening emergency situation, when receiving consent is not possible, decisions are made which are in the best interests of the pupil concerned.

3.0 MANAGING RISKS THROUGH EFFECTIVE CONSENT PROCEDURES

Each service will ensure that:

- Clear procedures to gain valid consent are followed in practice, monitored and reviewed;
- Consent is sought by a person who has sufficient knowledge about the pupil in order that he/she can make an informed decision;
- Any information related to a decision should be presented to the person in their preferred method of communication and all attempts must be made to ensure that information is presented to the person in a way that enhances their understanding
- Pupils are given enough time to think about their consent decisions where requested, except in an emergency when this may not always be possible;
- The right to have an advocate to assist them in making informed decisions is respected;
- We respect and take account of a decision by a pupil to refuse or withdraw consent;
- There is regular review of consent decisions, considering the changing needs of the pupils.
- Staff are informed and trained to understand their roles in assisting pupils to make decisions.

4.0 MENTAL CAPACITY

4.1 Rationale

Intimate Care Policy

The [Mental Capacity Act 2005](#) provides a statutory framework to empower and protect vulnerable people to be able to make their own decisions. It makes clear who can take decisions in which situations where an individual lacks capacity and how they should go about this. It enables people to plan ahead for a time when they may lose [Capacity](#).

The Act enshrines in statute current best practice and common law principles concerning people who lack mental capacity and those who take decisions on their behalf. It provides for reform and updating of the current statutory schemes for enduring powers of attorney and Court of Protection receivers (known as Court appointed Deputies).

4.2 Guidelines

Staff are in a position to help vulnerable people to make decisions. However, staff cannot make major decisions for vulnerable people and must always consult the following parties, as applicable to the individual:

- their families/legal guardian/s;
- person with power of attorney or a court-appointed deputyship;
- Independent Advocate;
- Independent Mental Capacity Assessor, and/or
- social worker/s

Staff have a key role in helping and supporting people with impaired mental functioning to understand what decisions need to be made and why, and what the consequences of those decisions are.

This guidance should increase staff awareness of the different options available to people to help them in this situation. We also need to be able to determine a person's mental capacity in relation to the decisions they face both throughout the care process and more widely in their lives. This guidance helps staff to understand the factors that affect capacity.

In day-to-day situations, where an individual's communication and capacity is limited, such as a choice of meals or clothing, staff will rely primarily on their knowledge of the individual pupil in similar situations and good communication practice. They will also liaise with families/guardians and social workers.

Mental Capacity Procedure

Decisions must be made on the following key principles:

- Assume capacity unless it is proved otherwise;
- Give all appropriate help before concluding someone cannot make their own decisions;
- Accept the right to make what might be seen as eccentric or unwise decisions;
- Always act in the best interests of people without capacity;
- Decisions made should be the least restrictive of their basic rights and freedoms.

Intimate Care Policy

Staff should be familiar with the [Mental Capacity Act 2005](#) and guidelines outlining:

- Assessing lack of capacity; • Defining a lack of capacity;
- Inability to make decisions;
- The [Independent Mental Capacity Advocate](#);
- Factors which may affect capacity;
- Best interests;
- Restraint/deprivation of liberty;
- Ill treatment.

Information to help staff understand the key aspects of the Act can be found here:

[Mental Capacity Act 2005 at a glance](#)

[SCIE - Mental Capacity Act](#)

[Mental Capacity Act 2005](#) (Mind)

5.0 DEPRIVATION OF LIBERTY SAFEGUARDING

The Deprivation of Liberty Safeguards (DoLS) were introduced by the [Mental Health Act 2007](#) as an amendment to the [Mental Capacity Act 2005](#). The Safeguards were operationally effective from 1st April 2009 and apply to:

- A relevant person over the age of 18 years;
- Who lacks capacity to consent to the arrangements for their care; and
- Who has not been detained under the Mental Health Act 1983; and
- For whom the Deprivation of Liberty is a proportionate and necessary step to take in their best interests to keep them safe from harm.

At all times, reference must also be made to the Local Safeguarding Board's guidelines in this area. Detailed guidance relating to local DoLS procedures can be found on the Outcomes First Group Resources Portal.

5.1 Court-appointed deputies

A court-appointed deputy often has a similar role to an attorney. Parents often apply to become deputies for adult children who have never had capacity. Deputies must follow the Code of Practice of the [Mental Capacity Act 2005](#), and work in the best interests of the person.

Intimate Care Policy

There are two types of deputies, for:

- Property and financial affairs deputy
- Personal welfare deputy

Staff must be clear on the arrangements in place for each person they are caring for and ensure the appropriate person/s are engaged in decision making for the person. Staff should not assume that parents can make all decisions for their adult child. Parents should be included in the best interest's process (unless there is an order in place preventing this). Their thoughts and feelings should always be respected and managed sensitively, but they do not necessarily have the legal right to make that decision.

We are part of the Outcomes First Group Family, by working together we will build incredible futures by empowering vulnerable children, young people and adults in the UK to be happy and make their way in the world.

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