



Mental Capacity Act Policy

This policy is underpinned by:

- Use of Reasonable Force, Advice for Head Teachers, Staff and Governing Bodies, Department of Education, April 2012. (Expires April 2013)
- Mental Capacity Act, Code of Practice, Department for Constitutional Affairs, 2005.

The Mental Capacity Act

The Mental Capacity Act (MCA) is a legal framework to support individuals aged 16 or over in England and Wales who lack mental capacity i.e. the capacity to make particular decisions for themselves. Equally, it also provides support those for individuals who do have mental capacity but wish to make preparations for a time in the future when they may not. In both instances it is intended to protect these individuals and maximise their ability to make decisions, or participate in decision-making processes as far as they are able to do so. The Mental Capacity Act applies to everyday decisions and life-changing decisions such as long-term accommodation moves, serious medical treatments, advanced medical treatments and Restrictive Physical Interventions (RPI). All people working with or caring for an adult (16 or over) that may lack capacity to make specific decisions must comply with this act when making decisions or acting on behalf of that person.

The Mental Capacity Act Code of Practice

The Mental Capacity Act Code of Practice provides guidance and information on the responsibilities of those with a duty of care for individuals who lack mental capacity. Whilst it is not a legal requirement to comply with the guidance given in the code of practice, those with a duty of care are expected to act with regard to it. Thus if the guidance has not been followed, justification would be required to explain why the code of practice has been departed from.

Five statutory principles underpin the legal requirements 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 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 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 his best interests.
5. Before the act is done, or the decision is made, regard must be had 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.

Determining a lack of mental capacity

A person is deemed to lack mental capacity if they are unable to make a particular decision.

Section 4.14 of the Mental Capacity Act Code of Practice states that a person is unable to make a particular decision if the person has:

- An impairment of or disturbance in the functioning of the brain;
- That impairment is sufficient to make the person unable to make the decision;

Or they cannot:

- Understand the relevant information about the decision to be made;
- Retain that relevant information in their mind;
- Use or weigh up that information as part of the decision-making process;
- or**
- Communicate their decision by talking, using sign language or any other means.

If a person is deemed to lack mental capacity to make a specific decision then a decision maker must be designated to make that specific decision. The decision maker is required to make a decision that:

- Is in the best interests of the person;
- And**
- Adopts the least restrictive option.

The Mental Capacity Act at Tor View Community Special School

Students at Tor View School present with a wide range of intellectual disabilities that can directly affect the functioning of their brain and prevent them from being able to make decisions for themselves. This means staff supporting these students are making decisions on their behalf and acting in the students' best interests in order to support their access the curriculum and their personal and social development, to address their most basic needs, and to maintain their safety and well-being.

Consequently, where these students are aged 16 and over our staff may be placed in the position where they are required to make decisions that fall within the remit of the Mental Capacity Act. It is therefore important all staff are aware of the Mental Capacity Act and the underlying principles that support it.

Restrictive Physical Intervention at Tor View and the Mental Capacity Act

A number of students at Tor View have behavioural targets that are addressed throughout their day and may shape the curriculum that is provided for them.

Staff work towards behavioural targets documented in a Behaviour Support Plan which outlines the short term and long term behaviour goals and provides staff with the appropriate proactive strategies to support students and keep them safe.

These Behaviour Support Plans also outline where the use of reasonable force including Restrictive Physical Intervention may be required and the protocols for carrying this out.

All staff are trained in the use of Restrictive Physical Intervention and will only use this in situations where it is deemed reasonable, proportional and necessary to keep our students safe; other students and staff safe; and to prevent damage to the environment. (The use of reasonable force and Restrictive physical Intervention is supported in documentation provided by Lancashire County Council (LCC) and the Department of Education which stipulates when reasonable force is acceptable within the school setting.)

Where Restrictive Physical Intervention is required with students over the age of 16 it is important that we are practising within our legal duty to regard the Mental Capacity Act and to understand and reflect on the importance of making decisions on our student's behalf.

The Process of the Mental Capacity Act at Tor View:

All students over the age of 16 that have a Behaviour Support plan that incorporates the use of Restrictive Physical Intervention or Seclusion will have a capacity assessment.

A person is deemed to not have capacity if any of the below are true:

- Impairment of or disturbance in the functioning of the brain
- Impairment sufficient to make the person unable to make the decision
- The person is unable to understand the information relevant to the decision
- The person is unable to retain it at the time
- The person is unable to weigh up that decision
- The person is unable to communicate that decision

If in our professional opinion the student lacks capacity a best interests assessment will be completed involving parents, teachers and any other relevant professional parties.

This will then inform the strategies that are present on the Behaviour Support Plan.

This ensures that our students are offered choice and decisions in every part of their school life and also allows us a further structure to ensure we are using Restrictive Physical Intervention in a proportional, reasonable and necessary manner.

This process of activating the Mental Capacity Act and the Capacity Assessment is outlined in diagram 1.1 and diagram 1.2. below.

Fig 1.1
Use of Restrictive Physical Intervention and Seclusion

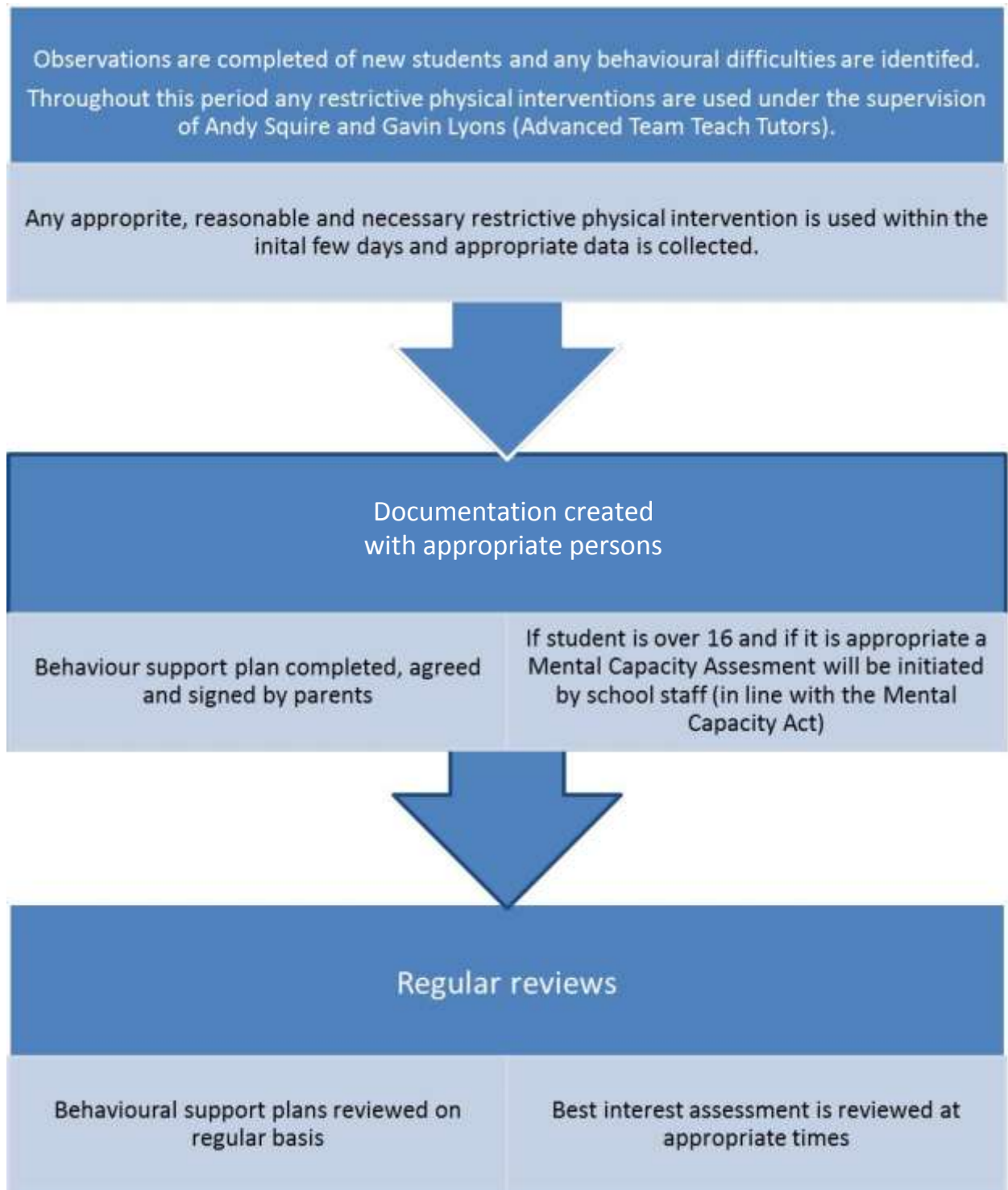
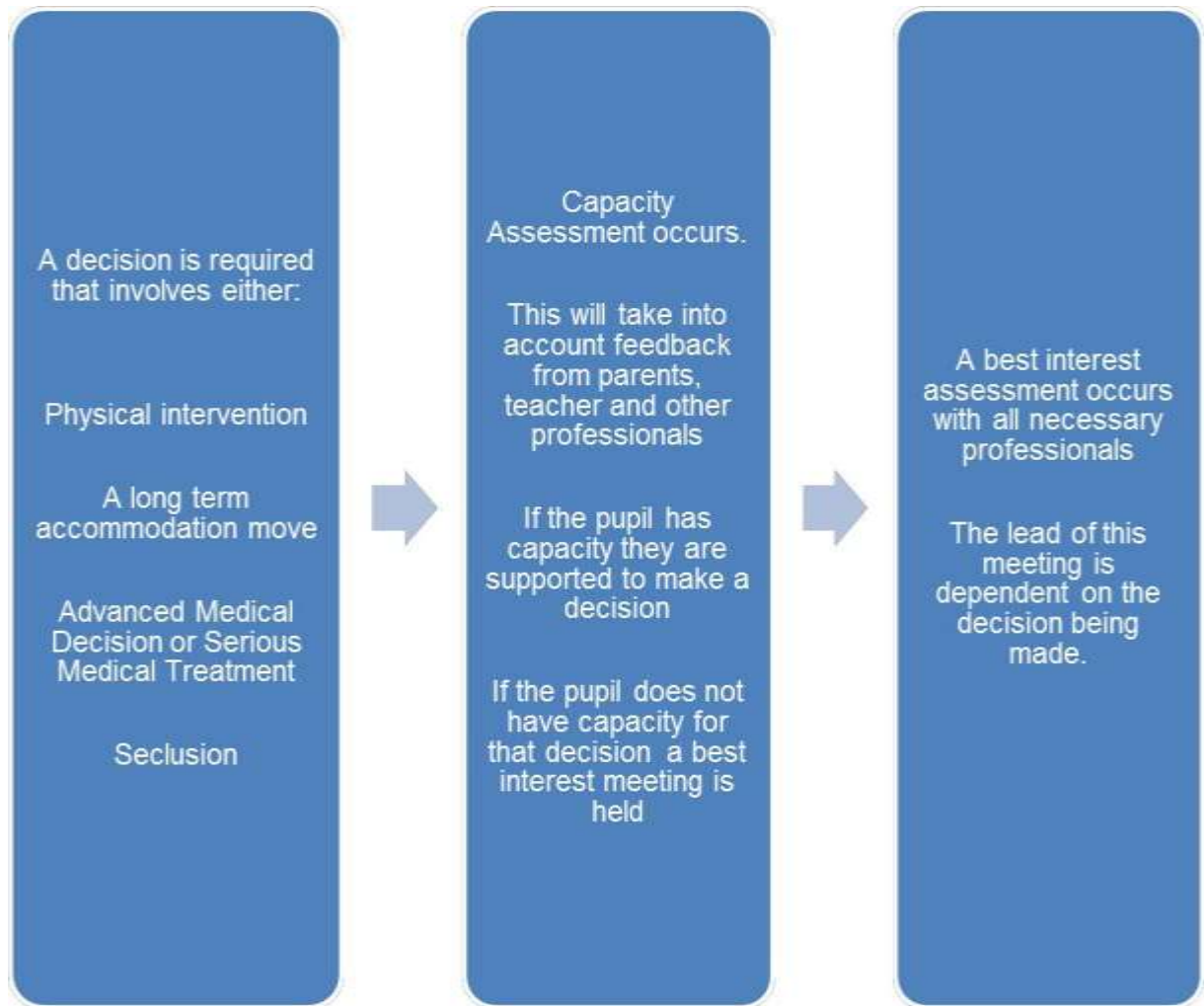


Fig 1.2
Process of assessing Capacity



Contribution to Mental Capacity Assessment, Best Interest Meetings and DOLS meetings outside:

As a school we recognise the importance of contributing to external meetings to support our students in medical meetings and also to work collaboratively with other services to aid transitions to other settings.

When we feel it is appropriate we will contribute and advocate for our students within these meetings including capacity assessments and best interest assessments.

However we will only contribute within our remit and expertise and will rely on other professionals to lead these meetings when the decision is external to the school, as we have our own policies and procedures within this setting.

We will make a commitment to attempt to contribute to any decisions that involve:

- Long term accommodation move to aid with student transitions
- Or
- Serious Medical Treatments or Advanced Medical Decisions

Deprivation of Liberty Act (DOLS)

We may also contribute any information that may be beneficial to students in adult placements that require referral to the court of protection. This includes any use of the Deprivation of Liberty Act (DOLS).

This act applies to adults over 18 years old that lack capacity. This is led and supervised by the Local Authority and involves an assessment under the Mental Health Act, Section 12. After a Best Interest Assessment (BIA) occurs a DOLS can be placed on an adult for 12 months where a restriction of liberty is needed to ensure the safety of that person.

	Name/Initials:	Date:
Written By:	AYH	
Reviewed:	LM	Feb 2015
	LM	Sept 2016
	GL	Sept 2017