Mental Capacity Act Policy

Policy Created: February 2026

Last Reviewed:

Next Review: February 2027 (or sooner if significant changes in legislation, guidance, or organisational activities occur)

Reviewed by:

Responsible Officer: CEO

Author: Laurence Clark

Approved by: CEO

Main Contact for Queries: info@pathwaysassociates.co.uk

Designated MCA Lead: Lynn James-Jenkinson (or nominated deputy)

1. Introduction and Commitment

Pathways Associates CIC is a disabled-led Community Interest Company dedicated to enabling people with learning disabilities, autistic people, and their families to live the lives they choose as equals in their local communities. The organisation is committed to upholding the principles of the Mental Capacity Act (MCA) 2005 in all interactions and decisions that involve capacity. This means assuming that everyone has capacity unless it is established otherwise, providing all practicable support to help people make their own decisions, not treating someone as lacking capacity merely because they make an unwise decision, acting or making decisions in the person's best interests when capacity is lacking, and ensuring that any act or decision is the least restrictive of the person's rights and freedoms.

Our approach is person-centred, trauma-informed, and co-produced with Experts by Experience and families. It prioritises empowerment, dignity, autonomy, and the right to make choices while safeguarding against harm. This policy aligns with the MCA Code of Practice (2007, with ongoing updates and reviews in 2025–2026), NICE guideline NG108 (Decision-making and mental capacity, last reviewed 2025), SCIE resources on supported decision-making, and CQC expectations for rights-based practice in health and social care settings.

This policy integrates with our existing policies: Service User Consent Policy (informed consent and supported decision-making), Safeguarding Adults and Children Policy (capacity in abuse responses and best interests), Patient Safety Incident Response Policy and Plan (best interests in safety incidents), Equality and Diversity Policy (addressing intersectional barriers), Co-production Policy (involving lived experience in capacity support), and Information Governance and Data Protection Policy (capacity for data decisions).

It reflects our values of being led by lived experience (Experts by Experience co-designing capacity support tools), partnership (working with individuals, families, advocates, and professionals), inclusion and respect (accessible, culturally sensitive processes), innovation (creative communication aids and methods), and integrity (transparent, documented decisions).

We commit to assuming capacity, maximising support, and only intervening in best interests when necessary, always promoting independence and choice.

2. Scope

This policy applies to all situations where mental capacity may be relevant, including consent for participation in training, events, co-production, Expert Hub activities, sharing personal information or stories, data processing, involvement in safety incident reviews, quality improvements, or any other decisions. It covers adults aged 16 and over who may lack capacity due to an impairment of, or disturbance in, the functioning of the mind or brain (for example, learning disability, autism, dementia, brain injury, or mental health condition). It applies to colleagues, associates, volunteers, Experts by Experience, partners, and anyone engaging with our services. It does not cover children under 16 (use Gillick competence and refer to Safeguarding Policy) or formal Deprivation of Liberty Safeguards/Liberty Protection Safeguards, as we do not provide direct care that typically triggers these.

3. Key Objectives

The organisation aims to assume and support capacity in all decisions, large or small. It seeks to conduct fair, proportionate assessments only when capacity is genuinely in doubt, make best-interest decisions collaboratively and in the least restrictive way possible, protect rights under the Human Rights Act and Equality Act, integrate MCA principles into co-production, consent, and safeguarding for ethical practice, and learn from experiences to improve support and reduce barriers.

4. Core Principles

The five statutory MCA principles guide our practice. We assume capacity unless it is established otherwise. We provide all practicable support before concluding that someone lacks capacity. We do not treat a person as lacking capacity simply because they make an unwise decision. We act or make decisions in the person's best interests if they lack capacity. We ensure any act or decision is the least restrictive of the person's rights and freedoms. Additional principles include person-centred and holistic approaches that consider the person's views, beliefs, history, and relationships. Accessibility is ensured through easy-read materials, visual aids, communication tools, or advocates. Assessments are time-specific and decision-specific. Decisions are transparent and clearly documented. Inclusion addresses inequalities, including for autistic people or those with learning disabilities.

5. Roles and Responsibilities

The CEO and senior leadership oversee compliance and promote a culture of supported decision-making. They appoint an MCA Lead and ensure resources and training are available. The MCA Lead (Lynn James-Jenkinson) advises on assessments, best interests, and complex cases, monitors practice, conducts audits, and liaises with external bodies such as the Court of Protection if required. Managers and event leads integrate MCA into activities, support assessments and best-interest meetings, and ensure accessible tools and advocacy are available. All colleagues, associates, volunteers, and Experts by Experience assume capacity, provide support, report concerns about capacity promptly, and follow procedures. Service users, families, and advocates are involved in decisions and can request reviews or additional support. If capacity relates to safeguarding, the Safeguarding Policy is followed; if related to consent, the Service User Consent Policy applies.

6. Procedures

We follow a structured process for applying the MCA. Capacity is assumed in all cases. Practical support is provided to help people make decisions, including information in accessible formats such as easy-read documents, Makaton, pictures, or repeated explanations, time to consider, quiet spaces, or support from familiar people. If capacity is in doubt, a two-stage assessment is undertaken. First, is there an impairment of, or disturbance in, the functioning of the mind or brain? Second, can the person understand, retain, weigh, and communicate the decision? Assessments are decision-specific and time-specific, involving multi-disciplinary input if needed and documented using a standard template.

If a person lacks capacity, best interests decisions are made. This involves consulting the person, family, advocates, and professionals, considering past and present wishes, beliefs, and values, and choosing the least restrictive option. Best-interest meetings are held where appropriate and documented using a checklist. Independent Mental Capacity Advocates (IMCAs) are referred for serious decisions if no family or advocate is available. Non-instructed advocacy is used for those with profound disabilities. Challenges or complex cases are escalated to the Court of Protection if disputes arise or formal authorisation is needed.

Capacity for data decisions follows our Information Governance and Data Protection Policy. Capacity in safety incidents follows our Patient Safety Incident Response Policy.

7. Training, Awareness, and Support

Annual MCA training is provided for all staff and relevant volunteers, covering the principles, assessments, best interests, and supported decision-making in accessible formats. Advanced training is offered for the MCA Lead and managers. Induction includes a policy briefing for new joiners and Experts by Experience. Awareness is raised through easy-read guides, posters, and co-produced resources. Support is provided for those assessed, including debriefs and advocacy referrals.

8. Monitoring, Review, and Continuous Improvement

This policy is reviewed annually or following legislative changes (for example, MCA reforms or Code of Practice updates). Monitoring occurs through audits, case reviews, and feedback. Learning is co-produced with Experts by Experience. Feedback is welcomed at any time, and annual summaries are included in the CIC report.

9. Conclusion

Pathways Associates CIC is dedicated to applying the Mental Capacity Act with respect, empowerment, and inclusion. By supporting decisions, protecting rights, and learning together, we honour our disabled-led values and enable better, autonomous lives for people with learning disabilities, autistic people, and their families.