



THE MAZE GROUP CIC

Mental Capacity and Deprivation of Liberty Policy

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Policy Approval

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1. Purpose

This policy sets out how The MAZE Group CIC (“MAZE”) ensures compliance with the Mental Capacity Act 2005 (MCA) and the associated Deprivation of Liberty Safeguards (DoLS). The aim is to safeguard individuals who may lack capacity to make decisions for themselves and to protect their liberty and rights in accordance with the law.

Where reference is made to staff this incorporates anyone who works or volunteers for MAZE (employees, contractors, trustees and volunteers).

2. Scope

This policy applies to:

- All staff working on behalf of MAZE.
- All adults aged 16 and over who may use our services and may lack the capacity to make specific decisions.
- All situations where staff are involved in care planning, support delivery, advocacy, or decision-making that could affect an individual’s rights or freedoms.

3. Legal Framework

This policy is underpinned by the following legislation:

- Mental Capacity Act 2005
- Deprivation of Liberty Safeguards (DoLS) – part of the Mental Capacity Act
- Human Rights Act 1998
- Care Act 2014
- Liberty Protection Safeguards (LPS), expected to replace DoLS (pending implementation)
- Equality Act 2010
- Working Together to Safeguard Children (2023)
- Mental Health Act 1983 (and the interface with the Mental Capacity Act)

This policy recognises the interface between the Mental Capacity Act 2005 and the Mental Health Act 1983. Where individuals are detained or treated under the Mental Health Act, this may take precedence. Staff must seek advice where there is uncertainty regarding the appropriate legal framework.

4. Key Principles of the Mental Capacity Act

MAZE upholds the five statutory principles of the MCA:

- Presumption of capacity – Every adult has the right to make their own decisions unless proven otherwise.
- Support to make decisions – People must be given all practicable help before being considered unable to decide.
- Right to make unwise decisions – A person is not to be treated as unable to make a decision merely because they make an unwise decision.
- Best interests – Any act or decision made on behalf of a person who lacks capacity must be in their best interests.
- Least restrictive option – Actions taken should be the least restrictive of the person’s rights and freedoms.

5. Assessing Capacity

Capacity is decision-specific and may vary over time. A person must be assumed to have capacity unless it is established otherwise.

Capacity assessments must always be time and decision specific. For example, a person may have capacity to decide what to eat but lack capacity to manage complex financial decisions. Similarly, a person’s capacity may vary depending on the time of day or their physical or mental state.

Staff must carry out or arrange for a capacity assessment where there is reason to believe an individual

may lack capacity to make a specific decision.

All assessments must follow the two-stage test set out in the Mental Capacity Act:

Stage 1: Is the person unable to make the decision?

A person is unable to make a decision if they cannot:

- 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)

Assessments must clearly document:

- Functional test
- Diagnostic test
- Causative nexus (link between impairment and inability)

These elements must be clearly evidenced across both stages of the assessment.

Stage 2: Is there an impairment or disturbance in the functioning of the person's mind or brain?

This may include conditions such as mental illness, learning disability, dementia, brain injury, or intoxication.

Both stages must be satisfied for a person to be assessed as lacking capacity.

Staff must:

- Take all practicable steps to support the individual to make their own decision
- Record the assessment clearly using organisational MCA assessment templates (see Appendix 2)
- Seek advice from safeguarding leads or professionals where required

For a person to lack capacity, their inability to make the decision must be directly linked to (caused by) the identified impairment or disturbance of the mind or brain. This is known as the "causative nexus" and must be clearly evidenced in the assessment.

An Independent Mental Capacity Advocate (IMCA) must be instructed where a person lacks capacity and has no appropriate family or friends to consult, and decisions relate to:

- Serious medical treatment
- Accommodation moves (28 days+ in hospital / 8 weeks+ in care)

Referrals should be made via the Local Authority IMCA service in line with local procedures. Staff must seek guidance from safeguarding leads if unsure.

Informal or unstructured assessments of capacity have no legal standing. Where there is reason to doubt a person's capacity, a formal capacity assessment must be completed and clearly recorded.

Where a formal capacity assessment is not undertaken, staff must clearly record:

- Why capacity is presumed
- What evidence supports this
- Why a formal assessment was not required at that time

All practicable steps must be taken to support individuals to make decisions, including the use of accessible information, interpreters, communication aids, and appropriate environments.

Consideration of capacity applies to all individuals involved, including those alleged to have caused harm where relevant.

MAZE will provide standardised forms, guidance, and training to support staff in completing lawful and consistent capacity assessments.

Fluctuating Capacity and Executive Functioning

Capacity may fluctuate over time, and staff should consider whether the decision can be delayed to enable the person to participate when they are better able to do so.

Staff must also consider executive functioning, including whether a person can put a decision into practice. A person may appear to understand a decision but be unable to act on it due to impairment. This must be considered as part of the assessment.

Assessments must include consideration of executive functioning, including:

- Ability to apply decisions in practice
- Evidence from past behaviour
- Views of family, carers, or professionals

Where capacity fluctuates, staff must:

- Consider delaying decisions where possible
- Record how capacity varies
- Document timing of assessments

MAZE will ensure all information and decision-making support is accessible, including:

- Easy Read formats
- Translation and interpretation services
- Communication aids
- Culturally appropriate support

6. Best Interests Decision-Making

Where a person is assessed as lacking capacity, any decision made on their behalf must be made in their best interests in accordance with the Mental Capacity Act 2005 and its Code of Practice.

Decision-makers must:

- Consider all relevant circumstances
- Involve the individual as much as possible
- Take into account the person's past and present wishes, feelings, beliefs, and values
- Consult with family members, carers, advocates, and relevant professionals
- Avoid discrimination or assumptions based on age, appearance, condition, or behaviour
- Choose the least restrictive option

Legal Considerations:

- Staff must establish whether there is a valid and applicable Lasting Power of Attorney (LPA) or Court Appointed Deputy
- Staff must check for any Advance Decision to Refuse Treatment (ADRT)
- Where no appropriate representation is available, a referral must be made to an Independent Mental Capacity Advocate (IMCA)

Recording Requirements:

- All best interest decisions must be clearly documented
- Staff must demonstrate how the decision was reached and who was consulted
- Any departure from the MCA Code of Practice must be clearly justified and recorded

Best interests decisions must be reviewed where circumstances change, new information becomes available, or the person's condition improves or deteriorates.

7. Deprivation of Liberty Safeguards (DoLS)

DoLS applies to individuals in care homes or hospitals who lack capacity and are deprived of their liberty. Although MAZE is not a care provider, staff must:

- Recognise signs of deprivation of liberty in supported settings
- Raise concerns or seek advice if DoLS may be applicable
- Refer to appropriate professionals or safeguarding teams
- Cooperate with assessments and safeguarding partners

Signs that a person may be deprived of liberty include. This includes use of the “acid test” (continuous supervision and control and not free to leave):

- Continuous supervision and control
- Lack of freedom to leave
- Lack of consent or ability to consent

Where a deprivation of liberty is identified, a referral must be made to the Local Authority for DoLS authorisation (or LPS when implemented).

Referrals must be made to the Local Authority DoLS team via established safeguarding pathways. Staff must escalate concerns to the Safeguarding Lead where required.

In complex or disputed cases, or where serious decisions are required, referral to the Court of Protection may be necessary.

8. Liberty Protection Safeguards (LPS)

MAZE will review and update this policy when LPS replaces DoLS. Staff will receive updated training and guidance to remain compliant with future changes in the law.

9. Advocacy and Support

Where capacity is in question or a person is unrepresented, referrals will be made to:

- Independent Mental Capacity Advocates (IMCAs)
- Legal or statutory advocates
- Relevant professionals (e.g., social workers)
- Where capacity is in question or a person is unrepresented, referrals will be made to appropriate advocacy services, including Independent Mental Capacity Advocates (IMCAs) in line with statutory requirements.
- Staff must follow local referral pathways and seek guidance where needed.

Staff can seek advice from the designated MCA Lead or Safeguarding Lead within the organisation.

10. Staff Responsibilities

- Attend regular training on MCA and DoLS
- Recognise and report concerns related to capacity and liberty
- Document capacity assessments and best interests decisions clearly
- Escalate complex issues to line managers or safeguarding leads
- Receive regular supervision to support safe and lawful application of the Mental Capacity Act

Training will align with the Intercollegiate Document for Safeguarding Adults to ensure staff competence levels are appropriate to their roles.

11. Record Keeping and Documentation

Accurate and detailed record keeping is essential to demonstrate compliance with the Mental Capacity Act.

Where a capacity assessment is undertaken, staff must record:

- Evidence of all steps taken to support the individual to make their own decision
- How the person understands the relevant information
- Whether the person can retain the information long enough to decide
- How the person is able to use or weigh the information
- How the person communicates their decision

Staff must also record:

- The outcome of both stages of the capacity assessment
- The rationale for the decision
- Who was involved or consulted
- Any involvement of LPA, IMCA, or other professionals
- Actions taken following the assessment

All documentation must be completed using approved MAZE templates and stored in line with data protection and confidentiality requirements (see Appendices 2, 3 and 7).

Staff must complete Mental Capacity Act training as part of induction and undertake regular refresher training appropriate to their role.

12. Safeguarding and Reporting

All concerns about potential breaches of mental capacity or unlawful deprivation of liberty must be treated as safeguarding concerns and reported in line with the organisation's Safeguarding Policy.

- IMCA referrals must be considered during safeguarding processes, including where decisions relate to serious risk, accommodation, or medical treatment.
- The person lacks capacity
- There is no appropriate representation
- Decisions involve serious risk, accommodation, or medical treatment

Quality Assurance and Audit:

MAZE will:

- Regularly audit MCA assessments and best interest decisions
- Monitor compliance through case file reviews and supervision
- Identify learning and training needs
- Report findings to senior leadership and governance structures

Any concerns identified through audit or practice must be addressed promptly to ensure safe and lawful decision-making.

Staff must consider whether a person's decision-making is influenced by coercion, duress, control, or undue influence, including in situations of domestic abuse or exploitation.

Where there are concerns that a person's decision is not freely made, safeguarding procedures must be followed alongside consideration of capacity.

13. Policy Review

This policy will be reviewed bi-annually or sooner in response to legislative changes, including the implementation of the Liberty Protection Safeguards.

Supporting documents will be maintained alongside this policy, including:

- MCA assessment templates
- Best interest decision forms
- Flowcharts and guidance documents
- Links to statutory guidance (e.g. MCA Code of Practice)

Staff must ensure they are using the most up-to-date versions of all supporting materials.

Appendix 1: MCA Decision-Making Flowchart

START

↓

Is there a specific decision to be made?

↓

Assume capacity

↓

Is there reason to doubt capacity?

- No → Person makes their own decision → Record → End
- Yes → Continue

↓

Provide support to make the decision (*e.g. communication aids, appropriate timing, environment adjustments*)

↓

Can the person now make the decision?

- Yes → Person makes their own decision → Record → End
- No → Continue

↓

Capacity Assessment (Two-Stage Test)

Stage 1: Functional Test

Is the person unable to:

- Understand information?
- Retain information?
- Weigh information?
- Communicate their decision?

↓

Stage 2: Diagnostic Test

- Is there an impairment or disturbance of the mind or brain?

↓

Does the person lack capacity?

- No → Person makes their own decision → Record → End
- Yes → Continue

↓

Is there a valid LPA or Court-Appointed Deputy?

- Yes → They make the decision → Record → End
- No → Continue

↓

Is there a valid Advance Decision?

- Yes → Follow Advance Decision → Record → End
- No → Continue

↓

Best Interests Decision

- Consult relevant others
- Consider the person's wishes and feelings
- Identify the least restrictive option

↓

Is the person unrepresented?

- Yes → Refer to IMCA

↓

Implement decision

↓

Is this a deprivation of liberty?

- Yes → Refer for DoLS / LPS authorisation

↓

Record everything

↓

END

Appendix 2: Mental Capacity Assessment Form (MCA)

1. Person Details

Field	Information
Name	
Date of Birth	
Decision to be made	
Date of Assessment	
Assessor (Name & Role)	

2. Support Provided

What steps were taken to support the person to make this decision?
(e.g. communication aids, timing, environment, involvement of others)

.....

3. Stage 1 – Functional Test

Criteria	Yes	No	Evidence / Notes
Can understand relevant information?	<input type="checkbox"/>	<input type="checkbox"/>	
Can retain information long enough?	<input type="checkbox"/>	<input type="checkbox"/>	
Can weigh/use information to decide?	<input type="checkbox"/>	<input type="checkbox"/>	
Can communicate their decision?	<input type="checkbox"/>	<input type="checkbox"/>	

4. Stage 2 – Diagnostic Test

Question	Yes	No	Details
Is there an impairment or disturbance of the mind or brain?	<input type="checkbox"/>	<input type="checkbox"/>	

5. Outcome

Assessment Outcome:

- Has capacity
- Lacks capacity

Rationale (link to evidence above):

.....

6. Next Steps

- Person to make their own decision
- Best interests decision required
- Referral required (e.g. IMCA / specialist input)

Details:

.....
.....

7. Sign-Off

Role	Name	Signature	Date
Assessor			
Manager / Reviewer (if applicable)			

Appendix 3: Best Interests Decision Form (MCA)

1. Decision Details

Field	Information
Decision Required	

2. Person’s Wishes and Feelings

(Include past and present wishes, beliefs, values, and any written statements)

.....

3. People Consulted

Role	Name	Views / Input
Family		
Professionals		
Advocate / IMCA		

4. Legal Checks

LPA / Deputy

- Yes
- No

If yes, details:

.....

Advance Decision (ADRT)

- Yes
- No

If yes, details:

.....

5. Options Considered

(List all reasonable options, including doing nothing)

.....

6. Least Restrictive Option

Identified option:

.....

How this is the least restrictive option:

.....

7. Final Decision and Rationale

(Clearly explain why this decision is in the person’s best interests)

.....

.....

8. Sign-Off

Role	Name	Signature	Date
Decision Maker			
Manager / Reviewer (if applicable)			

Appendix 4: Key Legal References

- Mental Capacity Act 2005
- MCA Code of Practice
- Human Rights Act 1998 (*Article 5 – Right to Liberty*)
- Care Act 2014

Appendix 5: External Guidance Links

- MCA Code of Practice:
<https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice>
- Lasting Power of Attorney (LPA):
<https://www.gov.uk/power-of-attorney>
- Advance Decisions (ADRT):
<https://www.nhs.uk/conditions/end-of-life-care/>
- IMCA Service:
<https://www.gov.uk/government/publications/independent-mental-capacity-advocates>

Appendix 6: Roles and Responsibilities (Quick Guide)

All Staff

- Identify capacity concerns
- Support decision-making
- Maintain clear and accurate records

Managers / Safeguarding Leads

- Provide guidance and oversight
- Review complex cases
- Ensure legal and policy compliance

Organisation

- Provide MCA training
- Audit MCA practice
- Maintain templates and guidance

All staff must receive Mental Capacity Act training as part of induction and ongoing refresher training appropriate to their role.

Training should align with the Intercollegiate Document for Safeguarding Adults to ensure staff have the appropriate level of knowledge and competence.

Staff must seek advice in complex cases. This may include:

- Safeguarding Lead
- Line Manager
- Local Authority safeguarding team
- Legal advice where required

The organisation will ensure clear routes for escalation are available to all staff.

Appendix 7: MCA Compliance Audit Checklist

Case / Person Name: _____

Date of Audit: _____

Auditor: _____

Checklist

Requirement	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>	Comments / Evidence
Capacity assessment completed where required	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Two-stage test correctly applied	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Evidence recorded for all four functional elements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Best interests decision documented (where applicable)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
LPA / ADRT considered	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
IMCA referral made where appropriate	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Least restrictive option clearly evidenced	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Clear rationale recorded for decisions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Overall Findings

Summary of compliance:

.....

Actions required:

.....

Review date: _____