

Pupil Voice and Mental Capacity Policy

Morecambe Road School

June 2021



Objectives

The term 'pupil voice' refers to ways of listening to the views of pupils and / or involving them in decision making. The term 'mental capacity' refers to The Mental Capacity Act (MCA) 2005 which has been in force since 2007 and applies to England and Wales. It applies to young people over the age of 16 and adults. The primary purpose of the Mental Capacity Act 2005 is to promote and safeguard decision-making within a legal framework. Everyone working with (or caring for) any young person from the age of 16 who may lack capacity must comply with the Act. The Mental Capacity Act does not apply to under 16s. In order to decide whether a child under 16 is able to consent to their own medical treatment, without the need for parental permission or knowledge they are assessed to establish if they are competent to make such decisions. This assessment is referred to as 'Gillick Competence'.

At Morecambe Road School we believe that children should be active participants in their own learning that their opinions should be heard and valued both in school and the wider community. We therefore actively seek ways to engage pupils and encourage them make a contribution. The pupils voice is valued and listen to in all contexts including signing, body language and symbols from the day of the Without Prejudice Visit until they leave, in preparation for adult life.

There are a wide range of approaches used across school to support pupils of all ages and abilities to engage in pupil participation and promote the pupil voice:

- School Council
- Peer mentoring
- Pupil contribution to annual review
- 1:1 therapy
- Pupil led enterprises
- Suggestions boxes
- Pupil assessment of learning
- Consulting pupils on their targets
- Variety of non-verbal communication methods such as Sign language and PECs

Mental capacity is the ability of a young person over the age of 16 to make their own decisions. This means being able to:

- understand information given to them in relation to a decision
- remember the information long enough to make a decision
- use or weigh up the information available
- communicate their decision in any way which can be recognised

If they are unable to meet these criteria, they are considered to be 'lacking capacity'. This can include young people with learning disabilities, mental health problems or brain injury.

When a young person over the age of 16 has been assessed as lacking mental capacity, there may be many different people and agencies involved in making decisions on their behalf, depending on the complexity of the situation. This includes parents, medical and educational professionals and other agencies.

The Mental Capacity Act 2005 (MCA) provides a clear framework for parents on who should be consulted in the decision-making process and when (for example in life-saving treatment).

The MCA sets out 5 core principles:

Principle	In Practice
1. A person must be assumed to have capacity unless it is established that they lack capacity.	Every young person from the age of 16 has a right to make their own decisions if they have the capacity to do so. Practitioners and carers must assume that a young person has capacity to make a particular decision at a point in time unless it can be established that they do not.
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.	Young people should be supported to help them make their own decisions. No conclusion should be made that a young person lacks capacity to make a decision unless all practicable steps have been taken to try and help them make a decision for themselves.

3. A person is not to be treated as unable to make a decision merely because they make an unwise decision. Young people have the right to make a decision that others would see as 'unwise'. This does not automatically mean they lack capacity and they should not be treated as such.

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. If the young person lacks capacity any decision that is made on their behalf, or subsequent action taken must be done using Best Interests, as set out in the Act.

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. As long as the decision or action remains in the young person's Best Interests it should be the decision or action that places the least restriction on their basic rights and freedoms.

These principles must be considered and followed in every instance when working with someone who may lack capacity to make a decision or decision for themselves.

Examples of people who may lack capacity include those with:

- dementia
- a severe learning disability
- a brain injury
- a mental health condition
- a stroke
- unconsciousness caused by an anaesthetic or sudden accident

Someone can lack capacity to make some decisions (for example, to decide on complex financial issues) but still have the capacity to make other decisions (for example, to decide what items to buy at the local shop). However, just because a person has one of these conditions does not necessarily mean they lack the capacity to make a specific decision.

Assessing Competence in under 16's

The test for assessing whether a child under 16 can give valid consent differs from that of a young person aged 16 or 17. The test for children under 16 is determined by considering whether they are 'Gillick competent'. The concept of Gillick

competence reflects the child's increasing development to maturity. The understanding required to make decisions about different interventions will vary considerably. A child may have the competence to consent to some information but not others. The child needs to be given the relevant information in an appropriate manner and given as much support as possible to help them make the decision. See *NSPCC Gillick Competency and Fraser Guidelines*.

Care and Treatment for Young People aged 16-17

There is a range of critical areas for practitioners to consider when making decision with people who may (at times) lack capacity. These are;

- Decisions about Leaving Care;
- Decisions about moving home;
- Decisions about managing risk and controlling behaviour;
- Decision about money matters.

People carrying out acts in connection with the care or treatment of a young person aged 16-17 who lacks capacity to consent within Section 2(1)* will generally have protection from liability (Section 5), as long as the person carrying out the act:

- Has taken reasonable steps to establish that the young person lacks capacity;
- Reasonably believes that the young person lacks capacity and that the act is in the young person's best interests; and follows the Act's principles.

When assessing the young person's best interests, the person providing care or treatment must consult those involved in the young person's care and anyone interested in their welfare – if it is practical and appropriate to do so.

This may include the young person's parents. Care should be taken not to unlawfully breach the young person's right to confidentiality (see Mental Capacity Act's Code of Practice). Nothing in Section 5 of the Act excludes a person's civil liability for loss or damage, or his criminal liability, resulting from his negligence in carrying out the act.

Stages of a Mental Capacity Assessment

The Mental Capacity Act sets down the 2 stage test of capacity. Any assessment should begin with stage 1 and only proceed to stage 2 if the first stage is met.

- Stage 1 – There must be an impairment, or disturbance in the functioning of the mind or brain.
- Stage 2 – There must be an inability to make the decision in question as a result of the impairment of, or disturbance in the functioning of, the mind or brain.
- The same 2 stage test applies for every assessment of mental capacity. However the nature of the information and practicable steps will vary depending on:
- The young person's needs;

- The nature of the decision to be made; and
- The urgency in which the decision needs to be made.
- A person is unable to make a decision for themselves if they are unable:
 - To understand the information relevant to the decision
 - To retain that information
 - To use or weigh that information as part of the process of making a decision or
 - To communicate their decision (whether by talking, using sign language, PECS or any other means)
- Even though the impairment or disturbance does not have to be diagnosed you must not make a judgement that it exists solely on the basis of:
 - The young person's age;
 - The young person's outward appearance; including
 - Any physical disability or sensory impairment; or
 - The young person's behaviour (including making an unwise decision).
- Recording the Assessment

A formal record of the assessment and determination should be recorded as soon as possible after it has been carried out. The record must demonstrate that the statutory principles of the Act have been applied and each element of the functional test assessed.

The record should contain all of the following:

- The evidence that has been used to confirm the presence of an impairment or disturbance of the mind or brain;
- The decision to be made;
- The relevant information that has been provided to the young person;
- The practicable steps that have been taken to support the young person to make their own decision;
- The outcome of each element of the functional test of capacity;
- The reason that the young person has been deemed to have, or to lack capacity to make the decision for themselves; and
- Where the young person has been deemed to lack capacity, the consideration that has been given to delaying the decision.

Notifying Others

You should take steps to notify the following people of the outcome of the assessment:

- The young person who lacks capacity;
- Any representative of the person;
- Any Donee of a Lasting Power of Attorney or Deputy;
- Anyone that the young person has asked you to notify; and
- Anyone else that you deem it relevant to notify, either with the young person's consent or in their Best Interests if they lack capacity to consent.

Therapy

Therapies (OT, Speech and Language and Physiotherapy) form an integral part of pupil's education at Morecambe Road School. Where appropriate, pupils are asked to provide input into target setting by identifying their own priorities for improvement and discussing the impact of this work. This allows pupils to work on areas they value and increases motivation.

The Curriculum

Embedded into the curriculum are teaching and learning opportunities where pupils are asked to consider and share their own opinions. They have opportunity to plan their own activities within a topic remit and to share work with the rest of the school in assemblies. Pupils are encouraged to reflect on their own learning and identify future goals in collaboration with teachers and support staff.

School Council

School council promotes democracy, leadership and mutual responsibility throughout the school. Elected class representatives meet termly. The process of school council provides:

- A positive forum for pupil voice
- Structured opportunity for pupil-leadership dialogue
- Pupils with an insight into democracy
- A forum for pupils to instigate change in respect of elements of school life, e.g. school meals, social areas, outdoor equipment.
- A feeling of self-worth and mutual respect for pupils.

Whole School Approach to Pupil Involvement

Staff understand the importance in involving pupils in all aspects of their education and learning. Pupil views are valued and time is always given to seeking out and listening to the views of individuals and to taking these views into consideration in any decision-making. Pupils routinely give their own contributions to their annual review meetings and take a central role in transition planning.

Opportunities for peer mentoring and support (e.g. prefects and seniors) are provided, as are extra-curricular clubs, many of which are run in response to pupil requests. Charity events and fundraisers for the school and for local and national charities (e.g. Children In Need) are planned in collaboration with pupils, thus giving them ownership and pride in what they achieve.

Morecambe Road School is committed to the promotion and protection of children's rights in line with the United Nations Conventions on the Rights of the Child. We believe that all children and young people should have opportunities to express their opinion in matters that affect their lives and strive to ensure that they are provided with learning opportunities that equip them to do so as effectively as possible such as Pupil Parliament. The nominated Governor for the pupil voice and mental capacity is Sarah Mainwaring.

Useful Links and Resources to be read in conjunction with this policy:

Mental Capacity Act Code of Practice

Mental Capacity Act – Easy Read Guide

Using the Mental Capacity Act – Guidance from SCIE including videos

Mental Capacity Act – NHS Choices Guidance

Mental Capacity Act – Rights Card

Approved by the Full Governing Body on 23rd June 2021

Signature: (Chair of Governors)  _____

Signature: (Headteacher)  _____

