



Perspectives on the Mental Capacity Act, sex, and relationships: Where is the line and who draws it?

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We asked our colleagues at CHANGE to share their thoughts on the case studies we read out in our talk... below is what they had to say.

CHANGE are a human rights organisation led by Disabled People, working to build an inclusive society where people with learning disabilities are treated equally. Their work is informed by the expertise of people with learning disabilities, which means they focus on delivering real change in areas that matter to them.

Case study 1

Lucy and John have been going out for five years. Both have a moderate learning disability. Every few months they go to a local seaside town for the weekend, accompanied by their respective support workers. They spend the night in a hotel; Lucy and John sharing a room and the support workers each staying in a room at the same hotel. They have this as a special time to be intimate with each other. Kieran, a new manager starts at Lucy's group home, and realising that Lucy and John have sex on these trips he demands that both Lucy and John have mental capacity assessments regarding their capacity to consent to sex. He says the service must do this "to cover their backs".

Comments from our colleagues at CHANGE:

We think it is a good thing that Lucy and John get the chance to spend time together. It is nice that they are going to a hotel where they have their own space like any other couple who are in love. It is not in the care home or in another setting made for people with learning disabilities, it is a hotel.

We are worried that if the care home is the one doing the assessment, and they are doing this only to cover their backs, then maybe this will not be fair and will end not in their favour just so that the care home is safe. The care home may not be thinking at the couple first.

Their relationship has been like this for a while, so to have an assessment now would make them feel horrible and afraid that someone from the outside may stop the way things are and have been for so long. It is not fair that a decision about your relationship should be made by someone else.

We are not against the assessment and understand that there are laws and something these things should be done because of these laws. The care home needs to work with them and put them at ease and make sure the whole thing is done in a considerate way and with their wishes at the centre of it. In case there are things about risks they do not fully understand, the care home needs to help them with information and support and options, instead of just making a judgement and taking their time away from them. They need to focus on what the couple wants.

Case study 2

Since moving out of her parental home and into supported living, Rachel had started going out to bars in the evenings more. Sometimes she would chat to staff and say she had 'hooked up' with someone, either back at their place or at the bar. Her staff were immediately alarmed by this. Though Rachel seemed to know HOW to have sex, she seemed to struggle to understand the level of risk in not using protection, simply saying she "makes sure he pulls it out before he makes a mess".

Comments from our colleagues at CHANGE:

We think it is good that Rachel has her independence and lives a normal life, going out and meeting people. Many people with learning disabilities struggle with that when they move on their own and become very lonely.

But she is putting her life at risk by not being careful. Her parents should have explained to her how to have safe sex but maybe they didn't. Staff should talk to her about risks, about sexually transmitted diseases and risk of unwanted pregnancy. Also a bar may not be the safest place to meet people so they should talk to her about staying safe and being careful about whom she goes home with, make sure she's not drunk. Easy read information about these risks would help. Also, peer support would help her understand all of this information. Her staff should make sure they give her condoms to have with her when she goes out, so she doesn't rely on the man having some.

She needs to get the right information and support, but they should not stop her from going out because it is a good thing.

Case study 3

Heidi and Ron have been going out for three years, they like to hold hands and to peck each other on the lips, but they have never had any more sexual contact. Every Tuesday and Thursday Ron comes to Heidi's group home to watch a movie. Even though Ron's support worker takes him back to his apartment at 19:45 every time, they both often fall asleep on the sofa. They express a wish for Ron to stay over at Heidi's for the night on some occasions to avoid this disruption.

Comments from our colleagues at CHANGE:

We think it is great that the two get the chance to spend time together often.

But it is not good that the support worker needs to interrupt their time together at a set time; that does not seem fair. They should be allowed to spend the night together if they want to, no matter how close their relationship is.

The staff need to talk to them about intimacy in case they feel like there should be more between them than a peck. If they decide for that to happen, they should be given the privacy to do so. They need to be aware of these things, even if they want to do them or not. But the staff should not make a big fuss



about them spending more time together and should not only allow them to spend time together because of the relationship they have. The fact that they spend nights together should stay the same if they decide just to peck or to have an intimate relationship.