

**Sexual Autonomy, Protection and  
Identity in Care Settings**  
**A one-day symposium 10th November  
2023**

**Programme and Abstracts**



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## Schedule

08.45 – 9.15 Registration and Refreshments

09.15 - 09.30 Welcome Address and Introduction: Laura Graham, Charlotte Emmett and Claire Bessant (organisers).

### **Session 1: 09.30 – 10.50 Capacity and Consent in Adult Care Settings**

(Chair and Discussant: Charlotte Emmett)

09.30 - 10.00 – Professor Jonathan Herring and Dr Charlotte Elves, Capacity and Consent to Sex and Sexual Assistance in Adult Care Settings

10.00 – 10.30 – Dr Laura Pritchard-Jones, 'Hard cases make bad law', or 'bad law makes hard cases': Sexual Capacity, Vulnerability and Safeguarding in Adult Care Settings

10.30 - 10.40 Questions and Answers

*10.40 - 11.00 Break*

### **Session 2: 11.00 – 12.10 Autonomy, Protection, and Vulnerability in Sexual Intimacy Decisions**

(Chair and Discussant: Claire Bessant)

11.00 – 11.25 – Professor Beverley Clough and Ruby Reed-Berendt, (Un)blurred lines? Sex, disability, and the dynamic boundaries of mental capacity law

11.25 – 11.50 – Dr Julian Hughes, Sex in a home or sex at home: What's the difference when it comes to autonomy and protection? A

Practitioner's Perspective

11.50 – 12.05 Questions and Answers



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*12.05 – 13.05 Lunch*

### **Session 3: 13.10 – 14.10 Sexual Assistance and Sexual Services**

(Chair and Discussant: Dr Laura Graham)

13.05 - 13.30 Dr Oluwatoyin Sorinmade, Dementia, Sexuality and the Law - Is the Law Striking the Right Balance?

13.30 – 13.55 – Dr Phil Harper, Rethinking Gender Neutrality: Creating an inclusive approach to supporting LGBTQ+ individuals with dementia

13.55 – 14.10 Questions and Answers

*14.10 – 14.30 Break*

### **Session 4: 14.30 – 15.30 Roundtable on Problem Solving in Law and Practice**

(Chairs and Facilitators: Laura Graham, Charlotte Emmett, Claire Bessant)

All speakers from previous sessions will join the roundtable to discuss legal and practical approaches case studies and problems relating to sexual autonomy, identity, and protection in adult care settings.

15.30 – 15.45 Closing Remarks – Laura Graham, Charlotte Emmett, and Claire Bessant (organisers)



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### **Capacity and Consent to Sex and Sexual Assistance in Adult Care Settings**

*Professor Jonathan Herring and Dr Charlotte Elves*

This paper will use as a starting point for its discussions the case of *Secretary of State for Justice v A Local Authority* [2021] EWCA Civ 1527 in which a man lacking capacity sought the assistance of his carers to access sexual services. The court held that it would not be lawful for the carers to offer this assistance. We use this case to make some broader points about “sexual assistance”. First, we argue that the valid concerns raised by the court about sexual services use which lay at the heart of the decision apply to all sexual services. We explore whether the real issue raised by the case should be seen as the legality of sex work generally, rather than in the context of disabled people. Second, we explore the claims raised in the case to “right to sex”. We suggest that this is a distracting claim compared with a far more important issue, which is the loneliness and social isolation of those in adult care settings. A right to meaningful intimate relationships. Providing and prioritising sexual relationships should not be seen as a substitute for what is a far more important need: to relational intimacy.

### **'Hard cases make bad law', or 'bad law makes hard cases': Sexual Capacity, Vulnerability and Safeguarding in Adult Care Settings**

*Dr Laura Pritchard-Jones*

This paper considers the extent to which the Mental Capacity Act 2005 is the best way to safeguard adults in care settings from sexual abuse. It does so by focussing on three related questions. First, are the developments in Court of Protection and appellate case law in this area being driven primarily by safeguarding concerns, and - more importantly - should they be? Second, are such developments concerning the Mental Capacity Act problematic in relation to care settings? Finally, would it be better to have a separate legal framework around adult safeguarding?



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### **(Un)blurred lines? Sex, disability, and the dynamic boundaries of mental capacity law**

*Professor Beverley Clough and Ruby Reed-Berendt*

In this paper, we consider the approach to decisions regarding capacity and sexual relations in the Court of Protection in England and Wales, and the boundaries drawn through its application of the Mental Capacity Act 2005 (MCA). We discuss recent developments in the law following the UK Supreme Court case *A Local Authority v JB* [2021] UKSC 52, which recast how capacity in relation to sexual relations ought to be assessed. Noting that this case has been warmly received by some feminist theorists for the centrality it affords to mutual consent, we draw on critical approaches from feminist, black feminist and disability scholarship, to call attention to the legal techniques and judicial reasoning in this case and the ways in which this embeds problematic norms and reinforces the marginalisation of disabled people. We call attention to the impoverished notions of equality advanced in the case and the assumptions that this appears to rely upon which obscure the realities and histories of legal intervention in disabled people's lives. We further argue that the approach in sexual relations cases appears to use capacity determinations as a vehicle to supplement gaps left by the criminal law, blurring their distinct rationalities and enabling opportunities for control. We suggest that important insights can be gained from bringing these critical perspectives into conversation, including unsettling assumptions contained in the judgment and in mental capacity scholarship more broadly, manoeuvring us out of the perceived intractability of legal reasoning in this context, and offering productive ways forward.



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### **Sex in a home or sex at home: What's the difference when it comes to autonomy and protection? A Practitioner's Perspective**

*Dr Julian Hughes*

There is a paradigm case of sex taking place in a care home. The tension that emerges is between a legalistic approach which emphasizes capacity and consent and a more liberal approach which emphasizes the human requirement for intimacy. But what happens about sex at home? There are sensitive practical problems: how do we know what is going on? More importantly, the possibility of sex at home perhaps sheds light on how we should think about sex elsewhere in the context of dementia and cognitive impairment. In this talk I shall consider some of the issues raised by thinking about sex at home. Often, perhaps, we should take heed of Marcel Duchamp's dictum: "There is no solution because there is no problem".

### **LGBTQ+ Micro Aggressions in dementia care settings**

*Phil Harper (they/them)*

It can be believed that there are 1.2 million older gay and lesbian people in the U.K (Semlyen 2016). If you apply this number of older LGBTQ people to the fact that one in fourteen people over the age of 65 may develop a form of dementia (Alzheimer's Society 2017), it can be estimated that there could be around 85,714 gay and lesbian people with dementia in the UK alone. There are currently not accurate statistics for trans and non-binary people living with dementia.

This will be a short oral presentation exploring LGBTQ Micro aggressions within dementia care/ health and social care settings. The session will include definitions, impact and best practice. The session will also adopt an Intersectional approach to understanding marginalization.



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### **Dementia, Sexuality and the Law- Is the Law striking the right balance?**

*Dr Oluwatoyin Sorinmade*

People living with dementia (PLWD) continue to express their sexuality/ engage in sexual relations, regardless of dementia. This may represent the expression of basic human instincts and needs, e.g. the need for companionship, physical contact, and the relief of loneliness, or may represent behavioural difficulties that can occur in dementia.

The legal position is for individuals engaging in sexual relations (ranging from kissing, cuddling to sexual intercourse) to give “here and now” consent to such activities. By extension, the position of the law is that PLWD who have lost the “here and now” ability to consent to sexual relations should no longer engage in such activities.

Such individuals, especially in care homes, are dissuaded/prevented from engaging in sexual relations “in the interest of their safety” regardless of whether the sexual relation(s) is driven by basic human instincts or by behavioural difficulties that can occur in dementia.

A recently concluded qualitative study examined the views of: (1) PLWD; (2) partner(s)/carer(s) of PLWD but with unpaid caring responsibilities; (3) carers supporting PLWD in care homes; (4) people over the age of 55 year who do not have a dementia diagnosis; and (5) professionals with expertise in the care of PLWD on: whether the position of the law achieves the right balance between protecting PLWD, and supporting them to engage in activities basic to human existence. The research findings will hopefully promote the enjoyment of life's experiences by PLWD in a safe manner, devoid of abuse and exploitation.



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