



Neutral Citation Number: [2021] EWCOP 15

Case No: 13508128

**IN THE COURT OF PROTECTION**  
**IN THE MATTER OF SECTION 21A OF THE MENTAL CAPACITY ACT 2005**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 23/02/2021

**Before :**

**THE HONOURABLE MR JUSTICE COBB**

**Between :**

**HD**  
**(By the Official Solicitor as her Litigation Friend)**

**Applicant**

**- and -**

**A COUNTY COUNCIL**

**Respondent**

**Re HD (Capacity to Engage in Sexual Relations)**

**John McKendrick QC and Mary-Rachel McCabe** (instructed by **Irwin Mitchell LLP**) for  
the Applicant

**Richard Alomo** (instructed by **Local Authority Solicitor**) for the Respondent

Hearing date: 13 January 2021

**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....  
**THE HONOURABLE MR JUSTICE COBB**

This judgment was delivered in public. The judge has given leave for this version of the judgment to be published. A transparency order is in place.

## **The Hon Mr Justice Cobb :**

### *Introduction*

1. This application, which was issued on 2 September 2019, concerns one young woman in her late 20s, who I shall refer to as HD. She has a learning disability of at least mild severity, which it is accepted amounts to an impairment of, or disturbance in the functioning of the mind or brain<sup>1</sup>. She also suffers from epilepsy and diabetes. She is represented in the proceedings by the Official Solicitor as her litigation friend. The Respondent to the application is the local authority ('the Local Authority') which has responsibility for her adult care services.
2. These proceedings began as an application by HD, pursuant to *section 21A Mental Capacity Act 2005* (hereafter "*MCA 2005*"), to challenge the deprivation of her liberty at her placement ('Kingsbridge House'<sup>2</sup>). The proceedings have now expanded (per *CC v KK and STCC* [2012] EWCOP 2136<sup>3</sup>) to include consideration of a number of issues related to HD's capacity and best interests. HD presents the case (per her application) on the basis that:

"It is appropriate for the Court of Protection to review the provisions and lawfulness of the authorisation and consider the applicant's best interests in relation to care, contact and residence to ascertain whether the best interests' requirement is met in this case".
3. In relation to the deprivation of liberty, it is agreed that HD will, within a few days of the hearing, leave Kingsbridge House, and the standard authorisation will fall away; I need to say very little about this. The focus has therefore been drawn to other issues relevant to the way in which she lives her life.
4. Taking the written evidence as a whole, there is in fact no controversy that the diagnostic test under the *MCA 2005* is met in this case, nor is there any challenge to the functional<sup>4</sup> test of her capacity:
  - i) to conduct the litigation,
  - ii) to make decisions about residence,

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<sup>1</sup> *Section 2(1) MCA 2005*

<sup>2</sup> Not its real name

<sup>3</sup> See Baker J, as he then was, at [16] "But once an application is made to the Court under s. 21A, the Court's powers are not confined simply to determining that question. Once its jurisdiction is invoked, the court has a discretionary power under s. 15 to make declarations as to (a) whether a person has or lacks capacity to make a decision specified in the declaration; (b) whether a person has or lacks capacity to make decisions on such matters as are described in the declaration, and (c) the lawfulness or otherwise of any act done, or yet to be done, in relation to that person. Where P lacks capacity, the court has wide powers under s. 16 to make decisions on P's behalf in relation to matters concerning his personal welfare or property or affairs".

<sup>4</sup> *Section 3 MCA 2005*

- iii) to make decisions about support and care,
  - iv) to make decisions about contact with others,
  - v) to make decisions about finances,
  - vi) to make decisions about the use of social media and internet use.
5. As the hearing began, there was, however, a dispute as to whether HD has capacity to decide to engage in sexual relations. The Local Authority was of the view that the presumption of capacity<sup>5</sup> in this regard was not displaced. The Official Solicitor was more circumspect; she posited the view that, on the basis of the written evidence, the presumption of capacity in this regard was, or was likely to be, rebutted. The specific issue on which the Official Solicitor focused my attention was that HD did not appear to understand that a sexual partner “must in fact consent before and throughout the sexual activity” and further “must have capacity to consent to sexual activity”<sup>6</sup>.
6. The court therefore heard oral evidence. This exercise helpfully clarified the issue beyond reasonable doubt, and by the conclusion of the hearing both parties shared (albeit reluctantly) the conclusion that HD does indeed currently lack capacity to decide to engage in sexual relations. This judgment sets out my views on this issue.
7. For the purposes of reaching my conclusions, I have read an extensive bundle of documents; I heard oral evidence from Miss A (the Local Authority’s safeguarding co-ordinator), from Miss B (HD’s social worker), and from Dr. Joshua Carritt-Baker, a jointly instructed Chartered Clinical Psychologist who had undertaken an assessment of HD over three meetings in 2020. HD was represented by Mr McKendrick QC and Miss McCabe; the Local Authority by Mr Alomo. I was greatly assisted by all counsel.
8. I was delighted to welcome HD to the hearing, and she remained throughout, listening to the evidence, discussion, and arguments.

### *Background facts*

9. As I have indicated earlier, HD has a mildly severe learning disability, epilepsy, and Type 2 diabetes. She has long standing behavioural problems; at one time, it was thought that she may have a borderline personality disorder, but there is no clear evidence of this on the papers before me. She has a history of self-neglect. Until the spring of 2019, she lived at home with her parents.
10. Around March 2019 HD started seeing a man, Y, of whom her family did not approve; this was entirely understandable as he is described by HD’s social worker as a “very high-risk sex offender”. Y had been made the subject of *Sexual Harm Prevention Orders* in 2009 and 2019; he is also said to be learning disabled. There were wider concerns expressed by the family and professionals regarding Y’s physical and financial abuse of HD. HD’s family ultimately concluded that she could not continue living at home whilst continuing her relationship with Y. HD denied any concerns about Y, or his status as a Registered Sex Offender.

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<sup>5</sup> *Section 1(2) MCA 2005*

<sup>6</sup> *Re JB* (citation below): at [100](2)

11. Therefore, in April 2019, HD moved from her home to an emergency residential placement, and in the following month (May 2019), she moved to Kingsbridge House (a 24-hour supported residential placement) where she remains. While there, she has been the subject of assessment and monitoring. She requires prompting to undertake personal care; she is considered to be at serious risk were she to have liberty to come and go as she pleased.
12. Through a successful programme of education and assistance, HD has been supported to prepare to move on from Kingsbridge House. Shortly after the hearing, she was to move from Kingsbridge House, to her own ‘supported living’ 1-bed flat with full-time support staff; she has seen this property and is excited by the forthcoming move.
13. Materially for present purposes, HD dreads the notion of being single, and becomes “visibly distressed”<sup>7</sup> when this is raised with her as a possibility. She craves male relationships, and has sought adult male relationships in the community and on-line. She has expressed sexual interest in male agency care workers at Kingsbridge House. HD has a history of making what appear to be unfounded allegations of sexual assault, including rape, against men; she also has been known to share naked photographs of herself on the internet. These issues have been problematic for those responsible for her care and support.
14. HD remained in a relationship with Y until around the spring of 2020. They had sexual relations; HD made allegations that Y had sexually assaulted and raped her. Y was imprisoned for assault (unrelated to HD) and released in March 2020, he committed a further assault on a female and was recalled by probation and further imprisoned. HD nonetheless continued to discuss her intention to marry Y on his release from prison. She remained in contact with him when he was in prison by way of ‘love letters’ and weekly telephone calls. Fortunately, HD ended this relationship in or around May 2020. Y was understood to be released in December 2020.
15. HD is currently in a relationship with Z; he has a learning disability and lives with his mother. HD and Z speak most evenings on the phone, the current Covid-19 lockdown restrictions prevent them seeing each other in person. Staff at Kingsbridge House have at times listened in on these calls; the conversations are sometimes mildly sexual in content. HD wears a ring on her wedding finger and reports that Z gave it to her and asked her to wear it; she says they have discussed marriage. Her support plan describes him as her “partner”. HD has stated that she wishes to live with Z, and that when she is in her own flat she will want unsupervised (i.e., private) time with him.
16. HD currently is fitted with a contraceptive implant. There is some uncertainty about how this procedure was achieved in 2018 given her apparent lack of capacity to have been able to consent to it<sup>8</sup>. I have not been invited to consider this point, but as the implant is due for replacement imminently, these issues may well soon arise for consideration.

*Capacity to decide to engage in sexual relations: the current law*

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<sup>7</sup> From the report of HD’s treating psychologist.

<sup>8</sup> Her father appears to have signed the relevant documentation.

17. As is, I hope, apparent from my comments above, I have firmly borne in mind the ‘first principles’ set out in *sections 1-4 MCA 2005* which are applicable in considering/determining capacity and best interests in the Court of Protection. A person must be assumed to have capacity unless it is established that she lacks capacity: *section 1(2) MCA 2005*. The burden of proof therefore lies on the party asserting that P does not have capacity. The standard of proof is the balance of probabilities: *section 2(4) MCA 2005*.
18. The law in relation specifically to sexual relations was recently clarified by the Court of Appeal in *A Local Authority v JB* [2020] EWCA Civ 735 (hereafter “*Re JB*”). The decision of the Court of Appeal in *Re JB* marks an evolution in the Court of Protection’s approach to this difficult issue. JB was a 36-year-old man with a complex diagnosis of autistic spectrum disorder and impaired cognition. He lived in a supported living placement with restrictions on his independence, principally because of his tendency to behave inappropriately towards women. He wanted to have a relationship with a girlfriend, and engage in sexual relations. Evidence from clinical psychologists indicated that he understood the mechanics of sex, but not the emotional state or intentions of others or the concept of consent. The analysis of capacity with regard to sexual relations had, until this case, been framed almost exclusively in terms of the capacity to *consent* to such relations, but the Court of Appeal reflected that giving consent was only part of the decision-making process. The fundamental decision was whether to *engage* in sexual relations and that was how the question of capacity with regard to sexual relations should be assessed in most cases.
19. It is, I hope, helpful to reproduce here the key passages from the judgment of Baker LJ from *Re JB*, given their importance to my decision. He said this:

“[92] The analysis of capacity with regard to sexual relations in the case law has hitherto been framed almost exclusively in terms of the capacity to consent to sexual relations. But as this case illustrates, giving consent to sexual relations is only part of the decision-making process. The fundamental decision is whether to *engage*<sup>9</sup> in sexual relations....

[93] But in the present case, it is JB who wishes to initiate sexual relations with women. The capacity in issue in the present case is therefore JB's capacity to decide to engage in sexual relations. In my judgment, this is how the question of capacity with regard to sexual relations should normally be assessed in most cases.

[94] When the "decision" is expressed in those terms, it becomes clear that the "information relevant to the decision" inevitably includes the fact that any person with whom P engages in sexual activity must be able to consent to such activity and does in fact consent to it. Sexual relations between human beings are mutually consensual. It is one of

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<sup>9</sup> Italics in the original

the many features that makes us unique. A person who does not understand that sexual relations must only take place when, and only for as long as, the other person is consenting is unable to understand a fundamental part of the information relevant to the decision whether or not to engage in such relations.

[95] ... I accept that it is important for the test for capacity with regard to sexual relations to be as simple and straightforward as possible but that cannot justify excluding information which is manifestly relevant to the decision. And if the consensuality of sexual relations is part of the relevant information, it plainly relates to capacity itself rather than the exercise of capacity.

[99] I recognise that, by recasting the decision as the decision to engage in sexual relations, and by including an understanding of the consensuality of sexual relations as part of the information relevant to the decision, we are moving on from the previous case law. But that is because the issues arising in this case and the arguments presented to us have not been considered by this Court before. In my judgment, however, it is not inconsistent with the earlier authorities of this Court. As recognised by this Court in B v A Local Authority<sup>10</sup>, "what comprises relevant information for determining an individual's capacity to consent to sexual relations has developed and become more comprehensive over time." That development has continued in this case. The Court in IM v LM<sup>11</sup> stressed that "the notional process of using and weighing information attributed to the protected person should not involve a refined analysis of the sort which does not typically inform the decision to consent to sexual relations made by a person of full capacity". But as already stated, the information which a capacitous individual must take into account in deciding whether to engage in sexual relations includes whether or not the other person is consenting. My decision in this case is therefore not inconsistent with earlier decisions of this Court.

[100] In summary, when considering whether, as a result of an impairment of, or disturbance in the functioning of, the mind or brain, a person is unable to understand, retain, or use or weigh information relevant to a decision whether to engage in sexual relations, the information relevant to the decision may include the following:

- (1) the sexual nature and character of the act of sexual intercourse, including the mechanics of the act;

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<sup>10</sup> [2019] EWCA Civ 913 at [47]

<sup>11</sup> See below.

- (2) the fact that the other person must have the capacity to consent to the sexual activity and must in fact consent before and throughout the sexual activity;
- (3) the fact that P can say yes or no to having sexual relations and is able to decide whether to give or withhold consent;
- (4) that a reasonably foreseeable consequence of sexual intercourse between a man and woman is that the woman will become pregnant;
- (5) that there are health risks involved, particularly the acquisition of sexually transmitted and transmissible infections, and that the risk of sexually transmitted infection can be reduced by the taking of precautions such as the use of a condom.” (in each case, emphasis by underlining added).

20. It is necessary to make one further and final point on the law. It is well-established that the test for determining the capacity to decide to engage in sexual relations is *transaction-specific* or *act-specific* and not *person-specific*, see Munby J (as he then was) in *Re MM; Local Authority X v MM and another* [2007] EWHC 2003 (Fam) at [86]:

“...capacity to consent to sexual relations is, in my judgment, a question directed to the nature of the activity rather than to the identity of the sexual partner.”

This was, of course, confirmed by the Court of Appeal in *IM v LM* [2014] EWCA Civ 37, at [52]:

“It is important to emphasise that *section 3(1)(c)* of the *Act* refers to the ability to use or weigh information as part of the process of making the decision. In some circumstances, having understood and retained relevant information, an ability to use it will be what is critical; in others, it will be necessary to be able to weigh competing considerations.”

*The evidence on capacity: HD’s capacity to decide to engage in sexual relations*

21. The evidence relevant to the issue of HD’s capacity to decide to engage in sexual relations is contained in the assessments of the social workers (Miss A and Miss B), and the three court reports prepared by Dr. Joshua Carritt-Baker.
22. Miss A provided a helpful assessment contained in a report dated 21 August 2020; she there referred to the fact that HD had been provided with support and education to improve her ability to think about intimate relationships, particularly around power, risks, sexual health and lying. Miss A recorded that it was clear that HD demonstrated a clear understanding of the mechanics of the act of sex, the fact that it could lead to pregnancy or an STI, and different forms of contraception. She went on to say this:

“Having a choice whether to participate in an intimate sexual relationship was discussed and [HD] was asked if she knew

what this meant in which she replied 'Do you mean the consent' I confirmed that to be to (*sic*) correct and asked [HD] again if she could tell me what it means in which she replied 'consent means before you have sex with someone you have to agree to it' I asked [HD] when might you not consent to it which she replied if you didn't want to'. I then asked [HD] how would you know someone wanted to, in which she replied 'because they would tell me'. I asked [HD] again how she would know they didn't want to, in which she advised 'well they would tell me'. I then asked [HD] if someone tells you they had changed their mind and no longer wanted to have sex what would you do 'I would respect them and not have sex'.

[HD] was then asked if someone forced themselves on her when she had not consented to sex what would she do in which she replied, 'I would try and push them away and if they didn't stop, I would shout for help then I would report them to the police'. I then asked [HD] what about if you wanted sex with someone and they did not want to have sex with you to which she replied, 'then I wouldn't get it and would leave them alone'."

...

"It is my professional opinion that [HD] is able to weigh the risks and benefits relating to consenting to an intimate sexual relationship, however I remain of the opinion that [HD]'s emotional need to be a relationship (*sic*) places her at risk of making unwise decisions and being vulnerable to coercion, however this would relate more to who she is in an intimate relationship with and the potential risks they may pose to her rather than her capacity to use and weigh the information to consent to a sexual relationship."

23. Materially, this assessment (as Miss A confirmed in oral evidence) did not cover the important question of HD's capacity to understand that her sexual partner *also* needed to have the capacity to consent. When asked about this in her oral evidence, she told me that in her opinion HD would *not* be able to form an understanding of someone else's capacity to engage in sexual relations. She expressed the hope that HD could acquire the capacity to learn this, although she recognised that HD would struggle to understand this in the abstract (rather than in a person-specific way).
24. Dr Carritt-Baker has prepared altogether three reports; the first and second pre-dated the Court of Appeal's judgment in *Re JB*, the third post-dated (and specifically considered the terms of) that judgment. Having considered the revised test on sexual relations as per *Re JB*, he opined:

"First, there is the question of whether [Z] himself has capacity to choose whether or not to engage in sexual activity: that is not known but there are grounds to think it is a relevant question...."



“Secondly, there is the question of what is being expected of [HD] in this regard. [HD] understands that consent is necessary for sexual activity and that it can be given or withdrawn at any time. However, the question here would seem to amount to something like: *Does [HD] have capacity to consent to sexual activity with someone about whom there are questions as to their capacity to consent to sexual activity?*”<sup>12</sup>

“Further, it requires [HD] to understand that [Z] giving apparent consent to sexual activity (e.g., by saying that he wants to engage in such activity) is not the requirement: she needs to reasonably believe that [Z] has capacity to choose to engage in such activity. The question is not just whether [Z] is seemingly consenting. It is also not just whether [HD] understands that [Z] needs to have capacity to consent. It is, in fact, whether [HD] can understand, retain and use or weigh the information that [Z] must have the capacity to consent.” (emphasis by underlining added).

25. Dr Carritt-Baker went on to opine that:

“[HD] herself is only just on the side of having capacity to consent to sex *in terms of the previous defined list*<sup>13</sup>. She seemingly wants to engage in sexual activity with someone about whom there are also questions about capacity. If ‘the fact’ (from above) is taken to be the narrow meaning (e.g., ‘I know that the other person must have capacity to consent’), then there is no ‘weighing or using’ of that information and it has become a hollow condition: it is necessary for her to be able make use of that information in her decision-making”.

“... where both parties have impaired intellectual functioning and there are legitimate questions about capacity to consent to sex, it is perhaps no longer possible to undertake a ‘type assessment’ (as defined in my previous addendum) that would reasonably be expected to generalise across most possibilities. That is, the question has become: *Do these two people both have capacity to consent to have sex with one another?*”<sup>14</sup>.

Dr Carritt-Baker thought that this would involve undertaking capacity assessments

“... both of and with the two parties: it needs to be clear that both parties understand the risks, mechanics and other considerations of consenting to sex – and that they are both

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<sup>12</sup> Italics in the original

<sup>13</sup> Italics in the original

<sup>14</sup> Italics in the original

giving their consent. In the absence of that, we are effectively asking both parties (who are known to be intellectually impaired) to be undertaking something like their own capacity assessments of one another (because what else could using or weighing the fact that the other person must have capacity actually equate to?)”

26. In his oral evidence, he underlined the difficulty in assessing whether HD (or someone in the same position as HD) does or does not have capacity in relation to the engagement in sexual relations. He suggested that:

“... the test makes more sense when one has capacity. But when two people may lack capacity, we get into the problem of circularity. We are then asking the question of both parties ... Each party must make some appraisal of the other’s capacity to consent. You can only solve the problem by engaging with both parties”.

He did not think that HD would be able to achieve an understanding of the need to assess the capacity of her sexual partner’s decision to engage in (and consent to) sexual relations; it is “beyond her ability”. He was very doubtful indeed that education could help her to process the somewhat abstract requirement for her to assess the capacity of any sexual partner; he thought that (at best) she could be supported to understand this in relation to an individual partner, but recognised that the test is not person-specific.

27. Thus, on the ultimately undisputed evidence and on the application of the test propounded in *Re JB*, I am driven to the conclusion that while HD understands the need for a sexual partner to consent to engage in sexual relations, it is clear from the evidence that she cannot currently understand the need for a sexual partner to have capacity to consent to sexual relations. I might add that had the question of HD’s capacity to engage in sexual relations been listed before me several months earlier, i.e., prior to the Court of Appeal’s decision in *Re JB*, I would probably have reached the opposite conclusion (i.e., that HD *had* capacity).
28. In his submissions, Mr McKendrick reflected more widely on the circumstances in which the court could tailor, or disapply any of, the relevant information contained in [100] of *Re JB*, in an assessment of capacity to engage in sexual relations. This discussion germinated from the suggestion in *Re JB* at [101]-[103] that it was still an open question “whether the information relevant to the decision whether to engage in sexual relations must *always* include all of the matters identified in the previous paragraph” (my emphasis by italics). Notwithstanding the inevitably distressing implications for HD of the conclusion to which the parties were drawn on the evidence, Mr McKendrick accepted that the circumstances did *not* exist here for the court to tailor or disapply the application of any of the relevant *Re JB* information. I agree. In short, there is no proper basis for distinguishing HD’s case from the ordinary run of cases which it seems to me were contemplated by Baker LJ, and I could not therefore but conclude that the information relevant to HD’s decision should be those set out in [100] of *Re JB*.

29. Dr Carritt-Baker persuasively opined (see [26] above) that it would not be possible, through a process of education, to enable HD to learn how to assess the capacity of her sexual partner to consent to sexual relations; he was of the view that this concept was too abstract for her to learn. In this regard he was to some degree at odds with Miss A (see [23] above). For my part, I consider that there is nothing to be lost, and possibly much to be gained, by providing HD with a package of further education<sup>15</sup> to see if she can so learn. In view of Dr. Carritt-Baker's pessimism about the outcome, I do not propose to adjourn these proceedings now to await the outcome of any such education offered; I would however be very willing to reserve any further application for determination of this issue to myself.

*Interface with the criminal law*

30. Within the wider reflections on the current law referred to in [28] above, Mr McKendrick invited me to consider the analogous position of 'consent' under the criminal law. He drew attention to the commission of the offence of rape if the alleged perpetrator "does not reasonably believe [their partner] consents" - see *section 1(2) and 3(1)(d) of the Sexual Offences Act 2003* (the 'reasonable belief' defence). He argued that an anomaly may well arise where the capacitous may lawfully reasonably believe their partner has capacity to consent to sex, and does consent, as a matter of criminal law, whereas in the context of welfare proceedings in the Court of Protection P must understand, retain, weigh up and use the fact her partner *must* have capacity to engage in sex. He submitted that the Court of Appeal in *Re JB* does not explain why a heightened civil test is required beyond that needed by the criminal law. His submission in this regard chimed with the observations of Macur LJ in *R v GA* [2014] EWCA Crim 299 in which she said this:

"The judgment of the Court of Appeal recognises and adopts the principle of the obvious desirability that civil and criminal jurisdictions should adopt the same test for capacity to consent to sexual relations by reference to various first instance judgments, amongst others *Re MM (Local Authority X v MM and KM)* [2007] EWHC 2003.

We agree. .... ."

31. Interesting though these reflections are, it is not necessary for me to make any determination on the point(s) he has raised in order to resolve the issue in the case; that may arise for determination on other facts. That said, I note that Baker LJ in *Re JB* was clear that the jurisdiction of the Court of Protection has a distinctly different focus from the criminal law and that it was not "appropriate to view these issues through "the prism of the criminal law"" ([106]). On the contrary:

"What is needed, in my view, is an understanding that you should only have sex with someone who is able to consent and gives and maintains consent throughout. The protection given by such a requirement is not confined to the criminal legal consequences. It protects both participants from serious harm." [106]

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<sup>15</sup> In accordance with the principle contained in *section 1(3) of the MCA 2005*.

*Conclusion*

32. I have not dwelt in this judgment on the uncontentious aspects of the case; these were barely the subject of debate at the hearing. I can nonetheless confirm that on the basis of the information and evidence presented, I am able to make *section 15 MCA 2005* declarations that HD lacks capacity to:

- i) conduct these proceedings;
- ii) make decisions about her:
  - a) residence
  - b) care and support;
  - c) contact with others;
  - d) social media and internet use;
  - e) finances.

Furthermore, I am satisfied that it is overwhelmingly in HD's best interests to move to her new flat and receive a package of 24-hour care. This is consistent with her wishes and feelings. It will promote her autonomy. The extent of her care and support plan and the restrictions placed upon her will have to be determined in light of my ruling in relation to the issue capacity to consent to/engage in sexual relations. Therefore, having reviewed the care plan, and heard the evidence of the social workers:

- iii) Pursuant to *section 21A MCA 2005* I extend the standard authorisation until such time as HD can transition to her new home;
  - iv) Pursuant to *sections 16 and 4A MCA 2005* I authorise the transition to her new home and the deprivation of her liberty there;
  - v) Pursuant to *section 16 MCA 2005* I authorise a care and support plan which provides proportionate restrictions on her contact with strangers and her use of the internet.
33. I am satisfied on the basis of the evidence (and in respect of this, neither Mr McKendrick nor Mr Alomo ultimately dissent), that HD lacks capacity to decide to engage in sexual relations. I propose therefore to make a *section 15* declaration in this regard too. This finding is, I recognise, a significant interference in HD's life. She is soon to be 30 years old and for the first time in her life will be living in her own apartment. She is at a crucial stage in her future development and has much to look forward to. She has met a partner (Z) with whom she appears happy. No assumptions can be made about the strength of her feelings for Z, or his for her, simply because they are both learning disabled; I value his and her achievements in finding happiness in a relationship in the same way as capacitous non-learning-disabled couples.
34. I wish HD to know that I, for my part, realise that this decision and the associated declarations will be profoundly disappointing to her; I know how important it is to her

to be able to have a full and rewarding relationship with a man. Given that there is no doubt that this decision will have a serious impact on her care and support plan and will significantly impact on many aspects of her future happiness and the fulfilment of her life, it is not a conclusion which I have reached lightly.

35. That is my judgment.