

Consent with a caveat

A woman who had been the victim of a forced marriage is able to consent to sex and marry but will need support to ensure her decisions are not made under duress. *Mark Smulian* reports

Awoman with learning disabilities has the capacity to engage in sex and to marry, the Court of Protection has ruled.

His Honour Judge (HHJ) Stuart Farquhar rejected arguments made by East Sussex County Council that the 32-year-old, referred to as W in the case, lacked capacity. However, he judged that she is vulnerable and will need support at appropriate times to effectively exercise that capacity.

The woman argued through her litigation friend the official solicitor (a litigation friend acts in legal proceedings on behalf of someone lacking mental capacity) that she had capacity but the local authority, East Sussex County Council, disputed this.

Abusive relationship

The court heard that, in 2016, the woman had met a Pakistan national in the UK on a student visa.

They married in November 2014, but this was found to be a forced marriage which was subsequently annulled, and the woman was the victim of abuse including rape.

Orders were then made by HHJ Thorp that the victim lacked the capacity to engage in sexual relations and to marry. The perpetrator of the rape was subsequently deported.

The woman, who lives in supported accommodation in East Sussex, consistently stated that she wanted to engage in sexual relations.

HHJ Farquhar said: "I would add that there have been several occasions in the documentation in which it has been stated that W is



The issue of whether W could consent to a sexual relationship was a legal rather than a clinical matter

not allowed to have sex. This is clearly not the order that was made and should not be explained to W in such terms."

A consultant in learning disability psychiatry who examined the woman, Dr Camden-Smith, stated in her report on the capacity to engage in sexual relationships: "It remains my opinion that W is able to understand and retain the relevant information. When supported to do so, and when not under duress, she is able to use the relevant information to make a decision and to communicate that decision."

Dr Camden-Smith found the woman to be able to make a decision, but "acting on that decision is significantly more challenging for her. Were she to be in a mutually respectful, safe relationship, it is my opinion that she would have capacity to make decisions about engaging in sexual relationships."

"However, if there is even minor perceived coercion, W is likely to

As with sexual relationships, it is my opinion that W is extraordinarily vulnerable to coercion, particularly in the context of a relationship

acquiesce with what the other person wishes to happen."

Dr Camden-Smith said a decision on whether W lacks capacity or is a vulnerable person requiring protection under the inherent jurisdiction "is a legal rather than the clinical matter. My opinion is that W has capacity in this domain but is a vulnerable adult."

She said of W's capacity to marry: "It is my opinion that W is able to understand, retain, use and weigh and communicate any decisions about marriage or civil partnership, and therefore has capacity in this domain."

"However, as with sexual relationships, it is my opinion that W is extraordinarily vulnerable to coercion, particularly in the context of a relationship."

Capacity with support

HHJ Farquhar said: "In all of the circumstances, I accept and adopt the position set out by Dr Camden-Smith and supported by the official solicitor – W does have the capacity to engage in sexual relations but she is a vulnerable individual who will need support at appropriate times to be able to effectively exercise that capacity."

"The care and support plan is to be drawn up in such terms as to be able to provide that support."

Turning to W's capacity to marry, the judge said the evidence clearly supported a finding that W had progressed significantly since 2016 and her covert marriage: "There is a high degree of co-operation between W and those providing her with support and she is open with them to such a degree that she would be unlikely ever again to be in a similar situation."

HHJ Farquhar concluded that W "does have the capacity to enter into marriage or a civil partnership". ■

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Cases

W, Re: Capacity to Engage in Sexual Relations & Marry [2025] EWCOP 32 (T2). <https://www.bailii.org/ew/cases/EWCOP/2025/32.html>