

A Local Authority (Respondent) v JB (by his Litigation Friend, the Official Solicitor) (AP) (Appellant)

Case ID: 2020/0133

Case summary

Issue

To have capacity to decide to have sexual relations with another person, does a person need to understand 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?

Facts

The appellant, JB, is a 37 year-old single man with a complex diagnosis of autistic spectrum disorder combined with impaired cognition. JB has expressed a strong desire to have a girlfriend and engage in sexual relations. However, his previous behaviour towards women has led the respondent local authority to conclude that he cannot safely have unsupervised contact with them.

The local authority filed an application in the Court of Protection seeking declarations as to JB's capacity in various areas, including his capacity to consent to sexual relations. The expert evidence was that JB understands that mechanics of sexual acts and the risks of pregnancy and sexually transmitted disease, but his "understanding of consent is lacking".

In the Court of Protection, the judge held that it was not necessary for a person to understand the need for their sexual partner's consent and declared that JB has capacity to consent to sexual relations. The Court of Appeal disagreed. It held that, to have capacity to engage in sexual relations, a person needs to understand that their sexual partner must have the capacity to consent to the sexual activity and must in fact consent before and during the sexual activity. JB appeals to the Supreme Court.

Easy read: [Case summary](#)

Judgment appealed

[\[2020\] EWCA Civ 735](#)

Parties

Appellant(s)

JB

Respondent(s)

A Local Authority

Appeal

Justices

Lord Briggs, Lady Arden, Lord Burrows, Lord Stephens, Lady Rose

Hearing start date

15 July 2021

Hearing finish date

15 July 2021

Watch hearing

15 July 2021 [Morning session](#) [Afternoon session](#)

Judgment details

Judgment date

24 November 2021

Neutral citation

[2021] UKSC 52