

# Sexual intimacy

**Dawne Garrett**

**Professional Lead – Older People and Dementia Care**

**Royal College of Nursing**

 *@Profleadolder*

# Issues

- When should we support?
  - When should we safeguard?
  - What does the law say?
  - What is the professional guidance ?
- 
- Let's explore these issues using a number of case studies

# Today

- Issues
- Case Studies
- Questions



# Positive, normal and natural

- Men and women can remain sexually intimate throughout their lives
- Age-related changes are complex and sexual activity changes
- Sexual health in later life confers benefits on general health and quality of life

# Sexual Intimacy can include

- being close – both physically and mentally  
cuddling
- kissing
- music and dancing
- being naked
- sharing a bed
- sexual intercourse
- using sexual adjuncts.

# Dementia

- Dementia impacts on all aspects of a person's life including sexual activity.
- In some individuals it increases apathy thereby reducing sexual expression. In others dementia increases disinhibition.

# World Health Organization (2010) Sexual Rights,

- The right of all persons, free of coercion, discrimination and violence, to:
- decide to be sexually active or not
- engage in consensual sexual relations
- choose their partner
- have respect for bodily integrity
- seek, receive and impart information related to sexuality

# Continued

- receive sexuality education
- achieve the highest attainable standard of sexual health, including access to sexual health care services
- pursue a satisfying, safe and pleasurable sexual life.
- WHO emphasises that: “...the responsible exercise of human rights requires that all persons respect the rights of others.”



# Criminal Law

Sexual Offences Act 2003 contains a number of offences including sexual activity with a person with a mental disorder impeding choice (consent)

Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity.

Causing a person, with a mental disorder impeding choice, to watch a sexual act.

The corresponding legislation in Scotland is the Sexual Offences (Scotland) Act 2009 and in the Sexual Offences (Northern Ireland) Order 2008

# Continued

Inducement, threat or deception to procure sexual activity with a person with a mental disorder.

Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception.

# Mental Capacity Legislation

1. a presumption of capacity
2. the right of individuals to be supported to make their own decisions
3. individuals must retain the right to make what might be seen as unwise decisions
4. best interests – anything done for or on behalf of people without capacity must be in their best interests
5. less restrictive alternative: before the act is done, or the decision is made

# Context of sexual relations

- The Court of Appeal (England and Wales) has confirmed that to have capacity to consent to sexual relations, a person needs to understand the mechanics of the act, and the possible consequences of having sexual intercourse, including sexually transmitted infections and pregnancy.

- The person also needs to understand that he or she has a choice and can refuse consent. The Court of Appeal has said that it is not necessary to factor in the risks posed by a particular sexual partner – capacity to consent to sexual relations should be assessed in general terms, not by reference to the particular relationship.

# Safeguarding adults

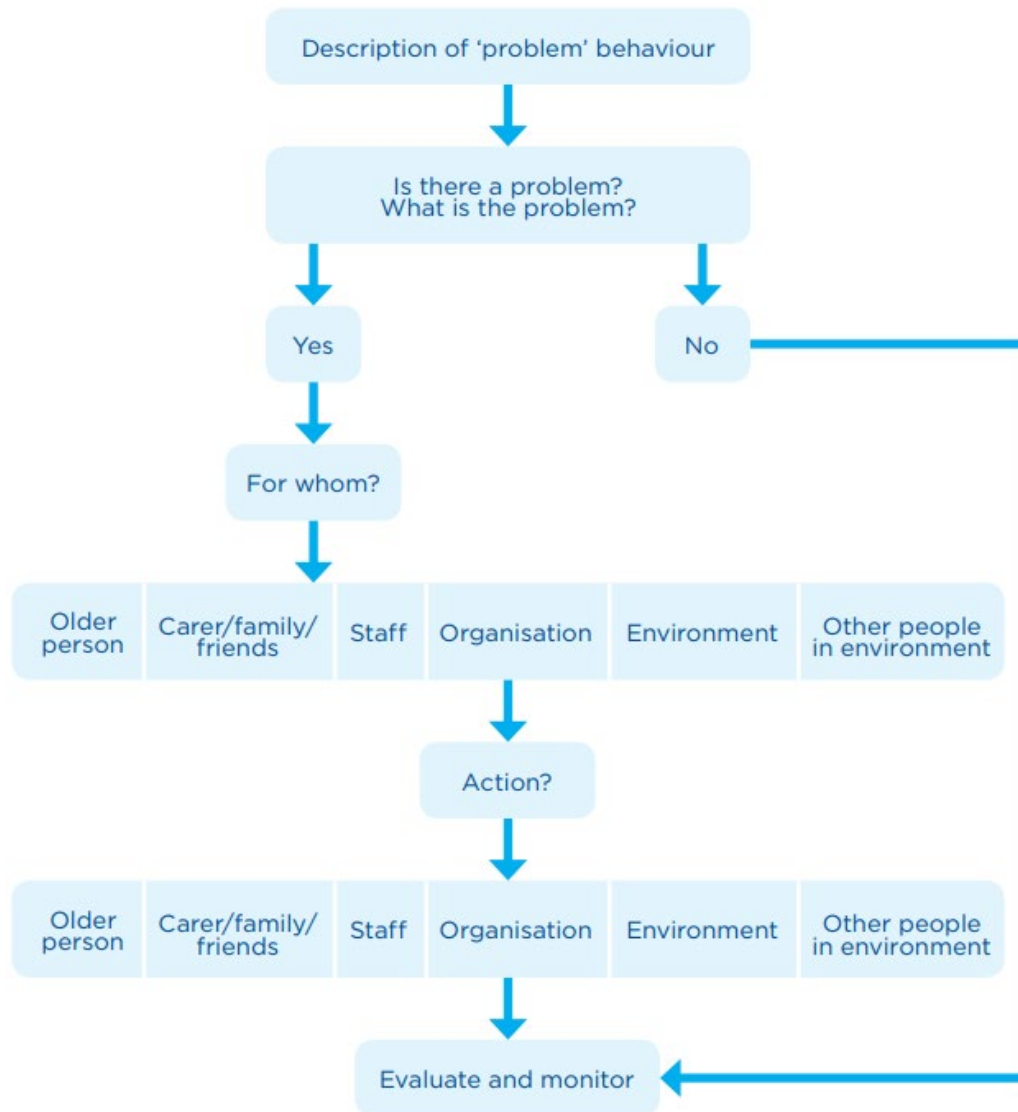
The fundamental principles underpinning all adult safeguarding work hold true around the UK these are:

- Empowerment
- Prevention
- Proportionality
- Protection
- Support
- Partnership

# Case Study 1

Rosie, who has lived with Alzheimer's disease for about five years, is deemed to have the mental capacity to make straightforward decisions in day to day life, but is not able to understand potential risks or consequences of some decisions. Her partner Bill explains to the warden of their supported living that he wants to be intimate with his wife. Rosie is always loving towards him.

Figure 5.1 Framework for action when sexuality is seen as a problem (Archibald 1994).



Archibald C (1994) Sex: is it a problem? *Journal of Dementia Care*. 2, 4, 16-18

Situations become more complicated when they involve more than one individual or a couple.



# Case Study 2

Anthony and Clara, are both living with dementia, have formed a relationship. They are happy in each other's company, hold hands, kiss and are relaxed together. One afternoon a carer inadvertently walked into Anthony's bedroom and found the couple in bed together. The carer apologised and asked if both were OK. The carer listened to the response and assessed that neither party appeared distressed and left the couple in privacy.

**Figure 5.2 A framework for assessment of concerns regarding sexual activity and intimacy for adults who are living in a residential setting (Phair, 2018)**

<b>Starting point: The presumption must be that both people are consenting adults</b>
<b>Step 1: The concern and who is concerned</b>
<ul style="list-style-type: none"><li>• What is the sexual or intimate activity (the activity) that has caused someone concern?</li><li>• Who is concerned by the activity?</li><li>• What is it that concerns them about the activity?</li></ul>
<b>Action:</b> <ul style="list-style-type: none"><li>• If the concerns expressed suggest a lack of understanding of the residents/ clients rights, wishes and desires as an adult; support the concerned person to understand and reflect on their opinions and perspective.</li><li>• Consider whether to ask the couple if they want to be supported in any practical, clinical or emotional way to enable their relationship to continue or be fulfilling.</li></ul>
<b>If the concerns expressed relate to either person appearing to be unhappy or they are not able to refuse the activity move to step 2.</b>
<b>Step 2 (if above outcome does not apply)</b>
<ul style="list-style-type: none"><li>• What verbal and non-verbal indicators were observed to suggest the person is unhappy with the activity?</li><li>• Are there any indicators that the behaviour may be grooming, coercive or controlling?</li><li>• Do either of the adults (residents/clients) who engaged in the activity have capacity to understand their desires and actions?</li></ul>
<b>Action:</b> <ul style="list-style-type: none"><li>• Assess the capacity of either or both people.</li><li>• Consider their capacity to consent within the context of the law.</li><li>• Consider whether there is a need to safeguard either person who appeared unhappy, controlled, groomed or coerced.</li></ul>
<b>Step 3: If both people are content but one person lacks capacity to consent to sexual intimacy</b>
<ul style="list-style-type: none"><li>• Consider the nature of the intimacy and whether the person who lacks capacity can lawfully continue in the relationship. Remember that you cannot make a 'best interests' decision about consent to sexual relations if the person lacks capacity to make this decision for themselves – if a person is not able to give consent, then sexual relations with that person will be an assault.</li><li>• If both people are content with the relationship and there is no sexual intimacy consider who needs to know and how this may impact on partners or other family members. This includes the children of either person and whether they have the power to affect the adult's right to companionship or intimacy.</li><li>• Consider whether to ask the couple if they want to be supported in any practical, clinical or emotional way to enable their relationship to continue or be fulfilling.</li><li>• Consider how to record your actions and decisions and whether other members of the multidisciplinary team need to be informed.</li><li>• If sexual intimacy is occurring, staff should inform the partner who has capacity (sensitively) that the activity is unlawful.</li><li>• If the person with capacity continues sexual intimacy, a safeguarding alert should be raised, and action taken to protect the person who lacks capacity.</li></ul> <p>NB this applies to all couples if either lacks capacity to consent regardless of the marital, civil partnership or long-term basis of the relationship.</p>

- Thank you
- If you have any feedback or further questions
- [dawne.garrett@rcn.org.uk](mailto:dawne.garrett@rcn.org.uk)
- @profleadolder