



UNDRESSING DISABILITY

enhance the uk

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Disability, Sexual Expression and the Law: What does it all Mean?

****PLEASE NOTE BEFORE USING THIS GUIDE****

Capacity to consent: *Not everyone has the mental capacity to consent. The law defines the age at which consent can be given for certain relationships and activities. It also requires that for consent to be valid it must be freely given and the individual concerned must be able to demonstrate a broad understanding of what is involved with a basic understanding of the likely consequences of their actions and of the decisions they make. If a person does not have this level of understanding then in the eyes of the law, they may be unable to give consent. This guide has been written for those individuals who have full mental capacity to consent without any doubts.*

Who this guide is for:

This guide has been written to help those with physical and/or sensory impairments (and professionals who work with them) only. This guide is not appropriate for individuals who have a learning disability or who do not have mental capacity to consent.

Introduction

How often does society talk about disability and sex in an informative, positive way? Rarely, if ever. Sex education, that has now been made compulsory in England's schools, is sadly not yet inclusive, and disabled people are still not represented in the media as desirable, sexual beings. But when it comes to legal, sexual rights, do disabled people have the same access and opportunities as their non-disabled peers? This guide, for disabled people and those who work with them in social, health, care and educational fields, aims to explore this legal grey area of sex and disability in detail. As Claire De Than states in her text 'Sex, Disability and Human Rights: Current Legal and Practical Problems', we are currently living in a society that places 'heightened concentration on the prevention of risk rather than the enabling of rights.'

Sex and the Law: What do we already know?

Very clear legal guidelines already exist for people who are sexually active in the UK. The legal age for consent of any sexual activity is 16 (and this is true for both straight and gay people), rape and sexual assault are, rightly, criminal offences, and there are also rules surrounding indecent exposure, grooming and pornography. According to the Sexual Offences Act (2003), it is also illegal for someone in a 'position of trust' (perhaps a doctor, carer or teacher) to have sexual relations with a person who is in their care, even where there is consent and both parties are over 16. But what happens if a disabled person is unable to communicate consent in the usual way, and what about having the rights, and responsibilities to, our own pleasure?

Consenting in your Way:

Not everyone is able to communicate in the same way, and this can sometimes blur the boundaries between consent and sexual abuse. Current legislation states that, in order to be able to consent to sex, there must be an understanding from the person wanting to engage in sexual activity of what sexual intercourse is, the health risks that may be involved with having sex, and an awareness and understanding that, by having sex, a woman could become pregnant. Consent is ultimately about choice, and being able to say 'no' to sex is an important part of that choice. If you are unable to actively say 'yes' to sex because of an impairment, but want to consent regardless, remember that consent can be shown by definite, positive actions too. And if at any point you wish to withdraw your consent, perhaps let your partner know what your action, or word, will be so that they can rightly stop immediately as soon as you change your mind (which is totally okay too, by the way).

Sex and the Care Field:

If you are supported in your daily life and want to discuss your sexual needs with someone, ask for this to be placed into your care plan. And if someone in a position of trust is avoiding those conversations or refusing to allow you to engage in sexual activities because they believe you are too vulnerable, even though you have expressed the desire to and are able to consent to sex, ensure that they understand your needs and feelings, too. As brilliant as safeguarding is at keeping us safe, it shouldn't be used to restrict our rights. However, it is important that you also understand the difficult position that your personal assistant may be in: if they are seen to have previously known about, or encouraged, a sexual relationship where mental capacity is later questioned, they could be in trouble with the law.

If you are a care worker, grey areas like sex, disability and the law are not easy to deal with. What is important is that you remember that your duty of care must be carried out in a way that upholds the rights of the person in your care as much as possible, always. Safeguarding can breach a duty of care if it limits the person in your care from having freedom and choice. In line with the Mental Capacity Act (2005), everyone is presumed to have mental capacity until it is proved otherwise. It's also important to remember that we all make unwise decisions, and that doesn't necessarily mean that we lack capacity!

The Question of Pleasure:

As disabled people, we have the right to a pleasurable private life as much as anyone else, in accordance with Article 8 of the Human Rights Act (1998). And although some people in society still chose to ignore it, we have sexual desires just like anyone else, too. If you want to have some sexual fun on your own, someone else buying sex toys or legal pornography for you is perfectly okay by law. So is someone else phoning a sex worker on your behalf if you are unable to hold the phone or press the buttons yourself. If you want to, you can also legally pay for a sex worker, but only do this if you understand that time with a sex worker is rarely as emotionally beneficial as a loving relationship.

In addition, there is also a legal 'grey area' that we need to cover when thinking about pleasure. If you would like to masturbate but are unable to do so yourself, it is legal for a care worker to assist you in doing so. However, what that actually means for both the disabled person and their assistant has not been outlined, and the exact rules and regulations of what is okay surrounding sexual assistance, and what isn't, are not yet clear.

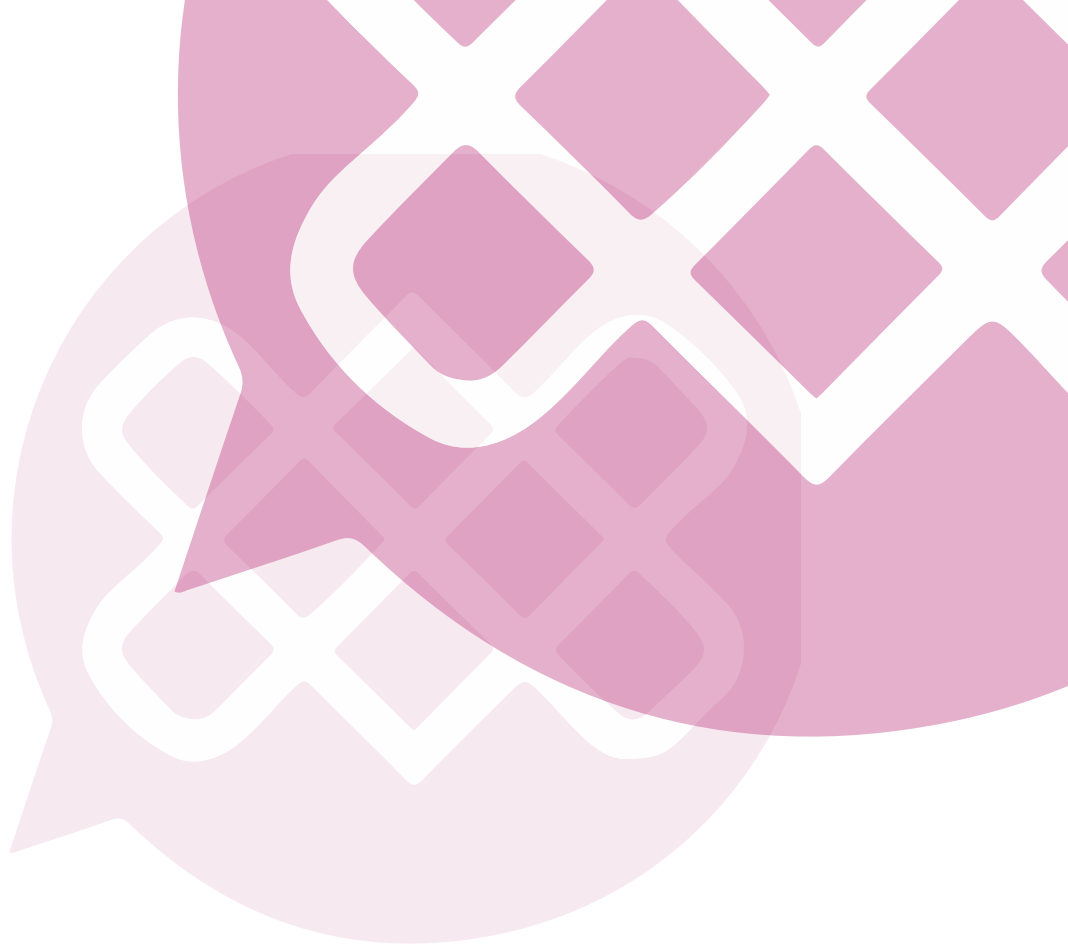
Dr Mitchell Tepper, who became a sexuality educator after breaking his neck in a diving accident defines what this assistance could mean: 'Facilitated sex, otherwise known as sexual assistance, is supporting a person with a disability along the whole spectrum of sexual expression. That may mean helping someone arrange a date, setting up for masturbation and cleaning up afterwards, helping to transfer somebody into bed to be with a partner, or — in the case where both partners have disabilities — positioning them so they can make contact.'

We, as a charity, are pushing forward with this to try and get a more definite answer to the 'Dos and Don'ts' of sexual assistance, as many carers are currently, and understandably, concerned about where the boundary between assisting pleasure and abusing a position of trust actually lie and, because of this,

are worried about encouraging or assisting with pleasure in any way. Sadly, the result of this worry is that disabled people are limited as sexual beings once again, and we are focusing on campaigning for more legal definition around sexual pleasure and sexual assistance, including assisted masturbation, so that this does not continue to happen.

The Importance of Inclusive Sex Education:

This guide has touched upon many factors surrounding disability, sex and the law. We've covered consent, pleasure and sexual offences and crimes that we must be aware of. The sad fact is, that many disabled young people are not given sex education that is applicable and accessible to them, as society still sees disability as undesirable, and disabled people as non-sexual beings. Young disabled women are now almost four times as likely to experience sexual assault and harassment than their non-disabled peers. Not only is this absolutely unacceptable and frankly very scary, it can quite easily be avoided by providing adapted sexual awareness and education to these young people. Documents need to be written in clear, concise language, young people must be made aware of disability fetishism (to be covered in another guide), and bodies in educational videos must relate to the bodies that our young disabled people live in and experience daily. It is proven that those who have access to appropriate and effective sex education are more likely to have more satisfying, fulfilling relationships themselves, better sexual health, and reduced vulnerability to sexual abuse. And that is, without doubt, something we are all entitled to.



About us

'Undressing Disability' is a global campaign which aims to raise standards in sexual health and sexual awareness for disabled people. Issues around sexuality and sexual frustration are frequently raised by disabled people who feel that they have less opportunity and ability to explore their sexuality than others. Through a lack of understanding, education and a general lack of services, disabled people frequently cannot access the support that would make it possible for them to make the sorts of choices about their lifestyles that most of us take for granted. As part of our campaign we run the Love Lounge, an online forum providing free advice on all things sex, love and disability. We also have free downloadable resources. As a user-led charity, our aim is to change the way people view disability, which often involves removing the 'fear factor' that so often surrounds the subject. We support businesses to be more inclusive by providing disability awareness training, British Sign Language workshops and accessibility audits, amongst other things.

e: hello@enhancetheuk.org
w: www.enhancetheuk.org
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CHANGING SOCIETY'S VIEWS ON DISABILITY