Philip and Barry live in supported living. Both have a learning disability and Barry is visually impaired too. The provider’s setting comprises two buildings with a connecting door between the two houses with four men living in each house with staff on duty round the clock, funding mixed between the LA and CCG.

Philip initiates sexual relations with Barry; the two men have been friends for over 25 years and enjoy each other’s company, holding hands and spending time together. It is evident they both enjoy having sexual relations.

It was determined both men lacked the mental capacity to consent to sex. Best interests meetings ahead of the week in court planned to hear the matter resulted in different positions; the CCG wanting the men to move apart, the LA wanting the men to remain together

References were made to IM v LM (2014) in the Court of Appeal where *“if, in any case, there is a declaration of lack of capacity, the relevant local authority must undertake the very closest supervision of that individual to ensure, to such extent as is possible, that the opportunity for sexual relations is removed”*