

# The Mental Capacity Act and Social Media

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# Recent Court Cases

- There have been two recent cases brought before the Court of Protection in regard to social media
- These cases included some significant risk for the people involved
- The Court in its judgements has provided us with a framework to use when considering people's mental capacity in relation to decisions about using social media.

# Re A (Capacity: Social Media and Internet Use: Best Interests)

- **Background:**

- This case involved a 21 year old man
- Decisions were needed in relation to his capacity to decide about residence, contact, care arrangements, property and affairs, sexual relations and internet / social media use
- He lived in supported living
- He attended college.

# Re A (Capacity: Social Media and Internet Use: Best Interests)

- **Issues:**

- Sharing of intimate photos and videos
- Accessing extreme pornographic sites
- Dangerous contacts
- He has poor literacy levels
- Allegations of rape
- Concerns that he could become negatively affected by his social media use.

# Re B (Capacity: Social Media, Care and Contact)

- **Background:**
  - This case involved a woman in her 30s
  - Decisions were needed in relation to litigation, property and affairs, residence, care arrangements, contact, sexual relationships and social media
  - She had considerable social care needs
  - She lived at home with family
  - She was prone to confrontational behaviour
  - She didn't respond well to being given information she didn't like.

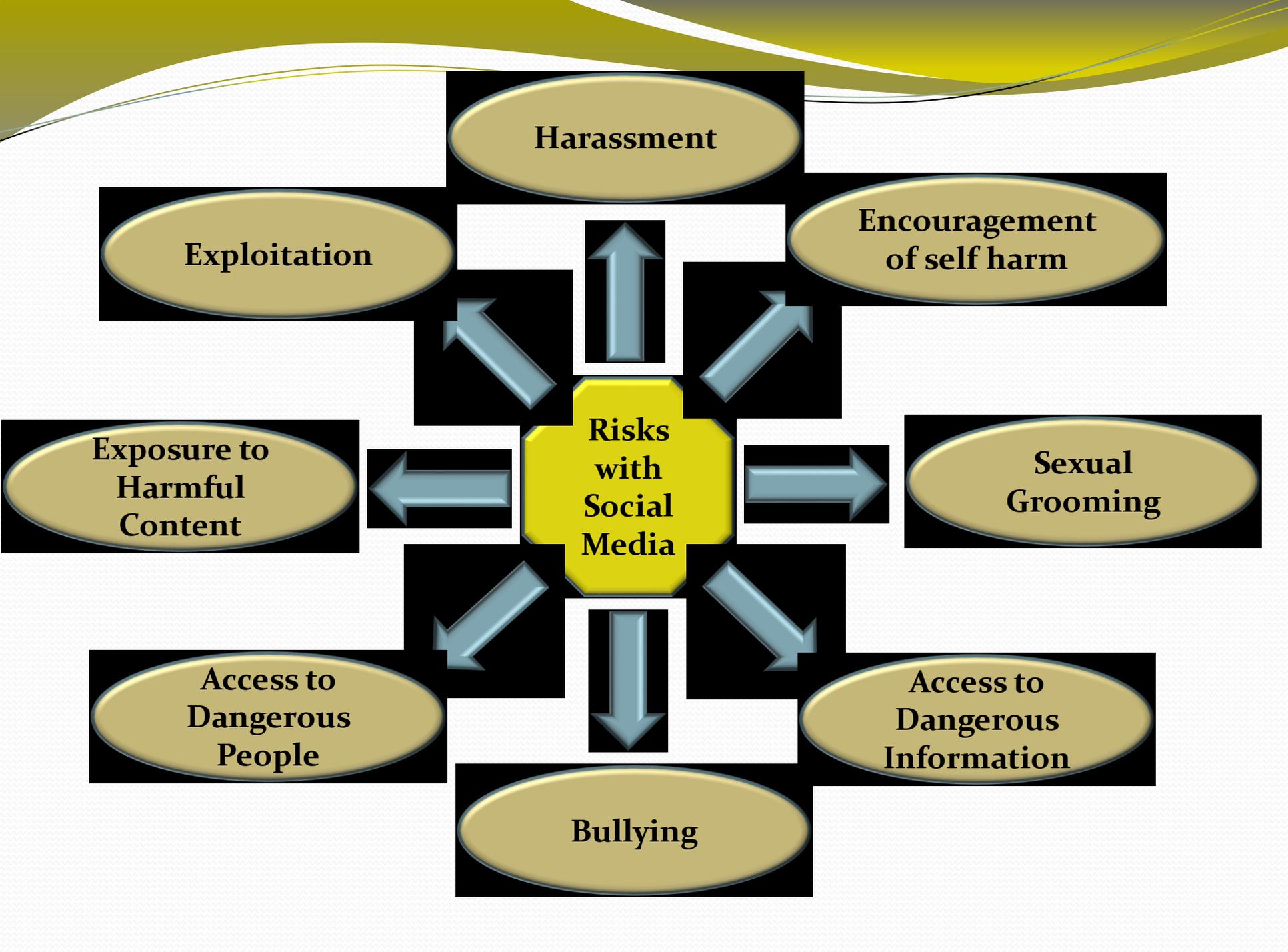
# Re B (Capacity: Social Media, Care and Contact)

- **Issues:**

- She sent intimate photos to men
- She searched the internet looking for a boyfriend
- She viewed all social media contacts as friends
- Regularly 'sex chats' with men
- She shared her home address
- She met with a number of men
- She was in contact with a known sex offender
- There had been inconsistent conclusions about her capacity.

# Benefit and Risk

- Social media can help people, who have disabilities, with social inclusion and enhanced autonomy. It can help people express a social identity and learn new skills
- Social media use can also lead to risks of harm.



Harassment

Exploitation

Encouragement  
of self harm

Exposure to  
Harmful  
Content

Risks  
with  
Social  
Media

Sexual  
Grooming

Access to  
Dangerous  
People

Access to  
Dangerous  
Information

Bullying

# Issues when considering capacity to use social media

- Someone's capacity to decide to engage with social media is different from capacity in relation to decisions about other forms of direct or indirect contact
- Considerations about the use of the internet and use of social media should be treated the same
- A decision that someone lacks the capacity to make a decision about accessing social media could lead to significant restriction being placed on their freedom.

# Before assessing capacity about social media

- Try to support the person in making their own decision (maximising capacity):
  - Simple language
  - Visual aids
  - Non-verbal communication
  - Getting support from others
  - Consider at the best time and in the best environment
  - Supporting eyesight and hearing
  - Give the person time
  - Consider a training programme.

# Relevant Information when assessing capacity in relation to social media use

That things you share on the internet or through social media could be shared with people you don't know, without you knowing or being able to stop it

That there are 'privacy and location settings' on some internet and social media sites

If you share things which are rude or offensive, or share images, other people might get upset or offended.

Some people you “talk to” online may not be who they say they are; someone who calls themselves a ‘friend’ on social media may not be friendly

Some people you ‘talk to’ on the internet, may pose a risk to you; they may lie to you, or exploit or take advantage of you sexually, financially, emotionally and/or physically; they may want to cause you harm

If you look at or share extremely rude or offensive images, messages or videos online you may get into trouble with the police, because you may have committed a crime.

# Information that is not relevant

That internet use may have a psychologically harmful impact on the user.

# After the assessment of capacity

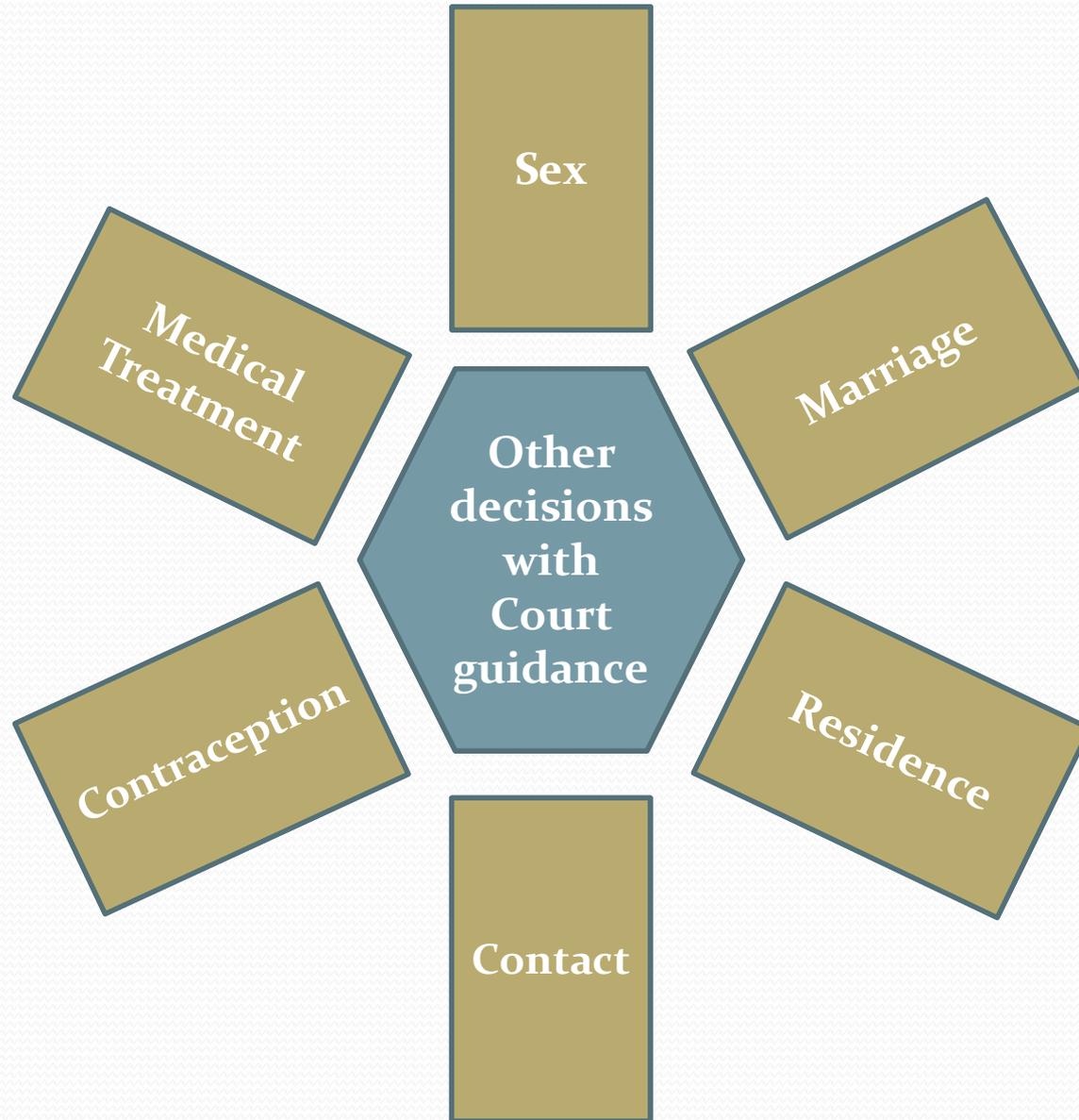
- Establish the link between the impairment of the mind or brain and the inability to make the decision
- Make a best interests decision that is proportionate to the risk of harm
- Consider if any restriction could lead to a Deprivation of Liberty.

# Outcome Case A:

- Case A – Capacity:
  - Judged as lacking capacity for decision-making in relation to social media, litigation and property and affairs
  - Judged as retaining capacity for decision-making in relation to residence and sexual relations
- Case A – Best Interests:
  - Best interest plan endorsed by the judge:
    - Use of i-pad for a limited period each day – under a degree of supervision
    - His phone was financially capped and does not have internet access
    - To check his phone for unwanted text messages daily and to ensure no inappropriate communication
    - Staff vigilance around their own devices.

# Outcome Case B:

- Case B – Capacity:
  - Lacks capacity to decide about contact with 70 year old. Interim injunction in place prohibiting him from contact
  - Lacks capacity for decision-making in relation to litigate, her care arrangements, contact and finances
  - Has capacity for residence
  - Interim decision - may have capacity for sexual relations, may have capacity regarding social media - for an education programme.



# Update

- In B (Capacity: Social Media: Care and Contact)  
The Official Solicitor has obtained permission to appeal on the findings in relation to sex and access to social media. Hearing expected 14/15th May
- For more information, the case can be found at:  
<https://www.bailii.org/ew/cases/EWCOP/2019/3.html>