

# How relevant is “relevant” information?!

- *JB v A Local Authority* [2021] UKSC 52
  - Must identify the information relevant to the decision “within the specific factual context of the case”
  - “To require a potentially incapacitous person to be capable of envisaging more consequences than persons of full capacity would derogate from personal autonomy.”
- *B v A Local Authority* [2019] EWCA Civ 913:
  - Judicial guidance on relevant information must be expanded or contracted or otherwise adapted to the facts of the particular case.
- Information relevant to a decision perhaps = (1) its nature (‘the what’), (2) its purpose (‘the why’), (3) its likely consequences (‘the foreseeable’)?
  - Salient, not peripheral details
  - What would a reasonable person in this situation foresee as likely to happen (in the near future)?

# The step-siblings of capacity and executive functioning

Legal parent of mental capacity: unable to use (MCA ss.2-3)?



**Clinical** parent of executive functioning: *A Local Authority v AW* [2020] EWCOP 24; *A Local Authority v H* [2023] EWCOP 4

Law Commission Report No 231 (1995) para 3.17: “decisions which are unconnected to the information or their understanding of it... the person’s eventual decision is divorced from his or her ability to understand the relevant information... A decision based on [an] inability to act on relevant information as a result of mental disability is not a decision made by a person with decision-making capacity.”

**\*\*Executive functioning is NOT the functional test for capacity\*\***

But one sibling may impact upon the other...

# 3-D Capacity Assessments

Unwise only?

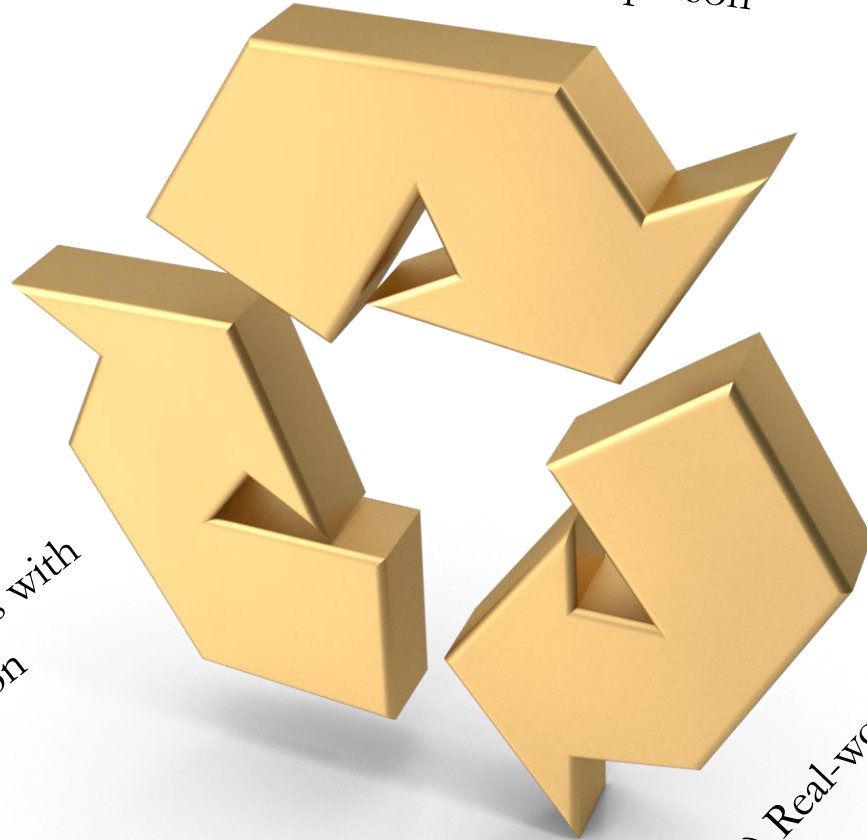
Procrastinators beware!

**\*\*Is there evidence of repeated mismatch between saying and doing?\*\*\***

**How does P rationalise it?**

**Is it BECAUSE OF the mental impairment?**

(1) Conversations with those who know the person



(2) Conversations with the person

(3) Real-world evidence

*Sunderland City Council v AS and Others [2020] EWCOP 13: importance of real-world observation to get a full picture*