

## **Forced Marriage and Adult Safeguarding Summary Guidance for Practitioners and Managers**

### **1. Introduction**

#### **Important: about this guidance**

1.1 This guidance is a short summary of some of the key points contained in:

- The Statutory Guidance *The Right to Choose: Multi-agency statutory guidance for dealing with forced marriage*, June 2014, produced to support implementation of Section 63 of the Forced Marriage (Civil Protection) Act 2007,
- The Forced Marriage Unit's *Multi-agency practice guidelines: Handling cases of Forced Marriage*, and
- The Forced Marriage Unit's *Forced Marriage and Learning Disabilities: Multi-Agency Practice Guidelines*. (N.B. This predates changes in the law in 2014, but it still contains much helpful practice guidance on this subject)
- LGA/ADASS guidance *Adult safeguarding and domestic abuse- A guide to support practitioners and managers*

**1.2 This summary guidance is *not* a substitute for these much more detailed documents, and you are strongly recommended to consult and be familiar with them.**

They can be found at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/322310/HMG\\_Statutory\\_Guidance\\_publication\\_180614\\_Final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/322310/HMG_Statutory_Guidance_publication_180614_Final.pdf)

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/322307/HMG\\_MULTI\\_AGENCY\\_PRACTICE\\_GUIDELINES\\_v1\\_180614\\_FINAL.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/322307/HMG_MULTI_AGENCY_PRACTICE_GUIDELINES_v1_180614_FINAL.pdf)

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/141824/Forced\\_Marriage\\_and\\_learning\\_disabilities\\_guidelines\\_FINAL.PDF](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/141824/Forced_Marriage_and_learning_disabilities_guidelines_FINAL.PDF)

<https://www.local.gov.uk/sites/default/files/documents/adult-safeguarding-and-do-cfe.pdf>

Part 10 of the Anti-Social Behaviour, Crime and Policing Act 2014 - <https://www.legislation.gov.uk/ukpga/2014/12/part/10>

**1.3** Where there is a concern that an adult with care and support needs is at risk of (or has already been) forced to marry, the guidance within the *Multi-agency policy & procedures for the protection of adults with care & support needs in the West Midlands* should be followed. These can be found at:

<http://www.bsab.org/publications/policy-procedures-and-guidance/>

In addition practitioners should also bear in mind the significance of all the other key and overlapping safeguarding adult practice matters, including:

- The principles of person-centred/ outcome-focused practice of Making Safeguarding Personal
- The 6 Key Principles of Safeguarding Adults
- Consideration of capacity to make decisions and the application of the Mental Capacity Act 2005
- The principles of risk assessment and risk enablement
- Consideration of the appropriate use of legal interventions

## 2. Duty to take account of Statutory Guidance

The Statutory Guidance, *The Right to Choose: Multi-agency statutory guidance for dealing with forced marriage*, June 2014, produced to support implementation of Section 63 of the Forced Marriage (Civil Protection) Act 2007 states that: “a person exercising public functions to whom the guidance is given must have regard to it in the exercise of those functions. This means that a person to whom the guidance is given must take the guidance into account and, if they decide to depart from it, have clear reasons for doing so.”

## 3. What is Forced Marriage?

- A forced marriage is where one or both people do not (or in cases of people who lack mental capacity, *cannot*) consent to the marriage and pressure or abuse is used to make the marriage take place or to force it to continue against the wishes of one or both partners. The legal definition can be found in 63A Part 4A Family Law Act 1996, as inserted by the Forced Marriage (Civil Protection) Act 2007  
<https://www.legislation.gov.uk/ukpga/2007/20/section/1>
- Forced marriage is against the law and a violation of a person’s human rights (see Section 9 Forced Marriage and the Law, below)
- Forced marriage is a form of domestic abuse. It can involve all the mechanisms of coercive and controlling behaviour, including grooming and physical, psychological, financial, sexual and emotional pressure to force the person to accept the marriage. (For the legal definition of coercive control visit [http://www.cps.gov.uk/legal/a\\_to\\_c/controlling\\_or\\_coercive\\_behaviour/](http://www.cps.gov.uk/legal/a_to_c/controlling_or_coercive_behaviour/))
- The abuse used can include violence intended to threaten, punish, or serve as a warning to others against behaving in a similar way. This is often referred to as “**honour based**” violence (see 8. Below). It can lead to death.

- There is a clear distinction between the definitions of **forced marriage** and **arranged marriage**. In arranged marriages, the families of both spouses take a leading role in arranging the marriage, but the choice of whether or not to accept the arrangement still remains with the prospective spouses.

In practice however, it may not be clear to the practitioner if coercion has or has not been used in arranging a marriage, and ultimately only the partners can say if they felt coerced into accepting the arrangement or not.

- Forced marriage forms no part of any religion
- Professionals involved in a case of forced marriage may be concerned about seeming culturally insensitive. However, forced marriage is a gross breach of an adult's human rights and the laws of this country; such concerns are therefore never an excuse for failing to provide assistance.
- Both men and women, whether gay, straight, or transgender can be victims of forced marriage
- Both men and women are perpetrators of forced marriage
- Most victims are women
- Most victims with care and support needs are men
- People with care and support needs are at a significantly higher risk of forced marriage
- Where an adult lacks the mental capacity to consent to marriage, coercion is not required for a marriage to be seen as forced in law
- Forced marriage affects people from many communities and cultures
- Some forced marriages take place in the UK; others involve a partner coming from overseas or a British national being taken abroad

#### 4. **Forced Marriage and Adults with Care and Support Needs**

4.3 Adults with care and support needs may be more likely to be victims of forced marriage due to: -

- Increased likelihood of social isolation
- Dependency on parents or family members and carers for practical assistance in daily living, including intimate and personal care
- Impaired capacity to resist or avoid abuse or understand that a situation is abusive
- Speech, language and communication needs
- Lack of access to a trusted person if wanting to disclose
- Being more easily coerced or eager to please.

#### 5. **Potential warning indicators**

These could include:

- The adult talking about marriage, jewellery or wedding clothes
- Family member asking a professional to sign a passport application or visa immigration form
- Being taken away from a service or out of the country, without explanation. (Alternatively, entirely plausible explanations for travel may be given, such as holidays, visits to ill relatives, etc. N.B. the presence of travel plans alone should be treated with caution as a warning indicator.)
- Changes in emotional or behavioural presentation, e.g. becoming anxious, depressed, frightened and emotionally withdrawn; exhibiting joy or excitement; signs of deteriorating mental health or displaying signs of self harm.

## **6. Motives for forced marriage**

**6.1 It is important to have an understanding the motives for forced marriage; but these should *never* be accepted as justification.**

6.2 Families may not be aware that organising the marriage of an adult who lacks capacity to consent would be illegal.

6.3 Parents who force their children to marry may justify their action as protecting them, building stronger family ties or preserving traditions. They often do not see anything wrong in their actions and may be open about their intentions.

6.4 Some other general key motives for forced marriage can be:

- Controlling unwanted sexual behaviour (including perceived promiscuity, or being lesbian, gay, bisexual or transgender) - particularly the behaviour and sexuality of women
- As a “cure” for homosexuality
- Controlling unwanted behaviour, for example, alcohol and drug use, wearing make-up or behaving in what is perceived to be a “westernised manner”
- Preventing “unsuitable” relationships, e.g. outside the ethnic, cultural, religious or caste group
- Protecting “family honour” or “izzat”
- Responding to peer group or family pressure
- Achieving financial gain
- Ensuring land, property and wealth remain within the family
- Protecting perceived cultural ideals
- Protecting perceived religious ideals which are misguided
- Assisting individuals from abroad to obtain UK residence and citizenship, perhaps for financial gain
- Long-standing family commitments.

## 6.5 Additional motives where an adult has care and support needs could be:

- Obtaining a carer for the person with care and support needs. (Experience in the West Midlands suggests this is a common motive for forced marriage involving adults with care and support needs.)
- Obtaining physical assistance for ageing parents
- Obtaining financial security for the adult with care and support needs
  - A belief that the marriage can “cure” a disability or mental ill health
- A belief that marriage is a “rite of passage” for all young people
- Mistrust that the health and care system will meet the adult’s long term needs
- A fear that younger siblings may be seen as undesirable if older sons or daughters are not already married
- The marriage being seen as the only option or the right option (or both) – no alternative
  - Adults with care and support needs may be seen as the only marriage option for other adults who have in some way “disgraced” family honour and are now regarded as “unsuitable” to enter any other marriage.

## 7. **Consequences of Forced Marriage for victims**

This can include:

- Being taken abroad and kept there without access to any money or phone and where the laws of the land prevent them escaping and may discriminate against vulnerable people. N.B forced marriage may not be a crime in that country and/or recognised as abuse
- Repeated sexual assault (of male or female victims) or rape
- Being the victim of domestic abuse/coercive/ controlling behaviour from their partner or extended family members
- Being forced to undertake all household chores for the family (in which case the crime of domestic servitude should be considered)
- Abandonment – the spouse without care and support needs may not want to provide their care and support, and could reject the adult
- The spouse without care and support needs may not realise they are committing a criminal offence by having a sexual relationship with an adult who does not have the capacity to consent to sex. (This is no defence in law). N.B. the spouse may also be a victim of forced marriage
- The spouse without care and support needs may be subject to violence from their in-law’s family should they seek to leave the marriage
- The spouse without care and support needs may seek exploitative access to the finances of the adult with care and support needs

- If one person in the family has been forced then it may mean that others may also be at risk i.e. other vulnerable adults, children or young adults
- Consequences of saying 'no' may mean that others are then put at risk, threats may be made and the risk of violence escalates.

Being at risk of poor mental health and displaying signs of self harm.

## 8. **"Honour based" violence and abuse**

**N.B.** In using the term "honour based violence" this guidance does not imply that the abuse is justified because 'honour' has been affected; or that victims' behaviour is at fault because they have wronged 'honour'. Practitioners must be sensitive to such perceptions being taken in using the term; to both prevent causing further distress or to seem to be giving justification to a crime.

8.1 Adults at risk of being forced into a marriage may also be at risk of honour - based violence/domestic abuse/coercive or controlling behaviour. This can include kidnap, rape, being held against their will, threats to kill and being abducted overseas. Ultimately it can lead to murder.

8.2 The terms "honour crime" or "honour-based violence" or "izzat" embrace a variety of crimes where the person is either being coerced into accepting a marriage they do not want or being punished by their family or their community for failing to accept it. They are being punished for actually, or allegedly, undermining what the family or community believes to be the correct code of behaviour.

8.3 In transgressing this 'correct code of behaviour' (see 8.2 above), the person shows that they have not been properly controlled to conform by their family and this is to the "shame" or "dishonour" of the family or its community. It is often committed with some degree of approval and/or collusion from family and/ community members. Victims can have multiple perpetrators in the UK and abroad.

8.4 The cultural and community pressures that lead to honour based violence/abuse may be so strong that all the usual assumptions practitioners might hold (such as believing that those closest to an adult would be those most likely to protect them) may not apply. In extreme cases, such pressure has led to the murder of victims at the hands of close family members who have conspired with parents and community members.

## 9. **Forced Marriage and the Law**

**9.1 The Anti-social Behaviour, Crime and Policing Act 2014** made it a criminal offence to force someone to marry. This includes:

- Taking someone overseas to force them to marry (whether or not the forced marriage takes place)
- Marrying someone who lacks the mental capacity to consent to the marriage (whether they're pressured to or not)

- Breaching a Forced Marriage Protection Order.

Specifically, **Section 121** provides that:

- A person commits an offence in England and Wales if he or she:
  - (a) uses violence, threats or any other form of coercion for the purpose of causing another person to enter into the marriage, and
  - (b) Believes, or ought to reasonably believe, that the conduct may cause the other person to enter into the marriage without free and full consent.
- Where a victim lacks capacity to consent to marriage, the offence is capable of being committed by any conduct carried out for the purpose of causing the victim to enter into a marriage (whether or not the conduct amounts to violence, threats or any other form of coercion.)
- A person commits an offence under the law of England and Wales if he or she practices any form of deception with the intention of causing another person to leave the United Kingdom, and intends the other person to be subjected to conduct outside the UK that is an offence under subsection (1) or would be an offence under that subsection if the victim were in England and Wales.
- Perpetrators – usually parents or family members – may also be prosecuted for offences including fear or provocation of violence, common assault, actual bodily harm, grievous bodily harm, harassment, common assault, kidnap, abduction, theft (of passport), threats to kill, false imprisonment and murder.
- The maximum penalty in a criminal court for forced marriage offences is seven years imprisonment.

### **Extra-Territorial Jurisdiction**

The offence of forced marriage applies whether it takes place in the UK or abroad. Any of the above prohibited acts carried out outside the UK by a UK national or person habitually resident in England or Wales is also an offence. And where the victim lacks the mental capacity to give consent (due to the nature of their learning disability, for example), it is not necessary to prove that either deception or coercion has taken place for the offence to have been committed.

### **9.2 Forced Marriage Protection Orders**

Forced Marriage Protection Orders can be sought under **Section 4A of the Family Law Act 1996**. These can be used for protecting children and adults at risk of being forced into marriage and for those who have already been forced into marriage. The terms of orders issued under the Act can be tailored to meet the specific needs of victims. Under **Section 120 of the 2014 Act**, the maximum penalty for breach of a forced marriage protection order is five years imprisonment.

**Section 4A of the Family Law Act 1996** provides for three types of applicant who may apply for a forced marriage protection order. They are the person who is to be protected by the order, **a relevant third party** or any other person with the permission of the court. A “**relevant third party**” means a person specified by order

of the Lord Chancellor who may apply on behalf of a victim without the leave of the court. Currently, this only extends to local authorities.

### 9.3 Mental Capacity Act 2005

If an adult does not consent or lacks capacity to consent to a marriage, that marriage must be viewed as a forced marriage.

The principles and code of practice of the Mental Capacity Act 2005 must be followed in determining if an adult has the mental capacity to consent to marriage and if they do not, in taking any decisions on their behalf.

### 9.4 Sexual Offences Act 2003

Any sexual act with an adult who lacks mental capacity to consent is a criminal offence.

### 9.5 Care Act 2014

- **Duty to Undertake Enquiries:** Forced marriage where the victim has care and support needs is a form of adult abuse. Where this is suspected, under **Section 42 of the Care Act 2014** the Local Authority has a duty to undertake (or cause others to undertake) enquiries to establish if this is the case and if so; determine what steps should be taken to stop or protect the adult from abuse.
- **Principles of Making Safeguarding Personal:** Adult safeguarding enquiries must place the adult at their centre and involve them to the greatest extent possible
- **Independent Advocacy:** Where an adult with care and support needs has substantial difficulty in taking part in their adult safeguarding enquiry, they are entitled under the Care Act 2014 to be supported by an Independent Advocate provided by the Local Authority, if there is no one else appropriate to support them. In cases of forced marriage it is very unlikely that any member of the adult's family would be an appropriate advocate.

## 10. Practice Guidance

N.B. See 1.1, 1.2 and 1.3 above for references to detailed practice guidance.

In particular, note Chapter 4 *General Actions to be taken in all cases* in the Forced Marriage Unit's: *Multi-agency practice guidelines: Handling cases of Forced Marriage*, and the specific sections intended for each key agency:

Chapter 6 - Health

Chapter 7 - Schools, Colleges and Universities

Chapter 8 - Police

Chapter 11 - Adult Social Care

Chapter 12 - Local Authority housing

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/322307/HMG](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/322307/HMG)



**Key guidance points to note are:**

**10.1 Safeguarding Adults** A concern that an adult with care and support needs may be at risk of being (or has already been) forced into a marriage, is a safeguarding adult issue, as well as a criminal matter (see 10.3 below).

**10.2 Children** Forced marriage involving a child is always child abuse, and any suspicion of this should be reported to the Child Advisory and Support Service (CASS) on 0121 303 1111.

In addition, where there are child siblings in a family where an adult is thought to be at risk of forced marriage this must also be reported to CASS

**10.3 Forced marriage is a crime:** Where an adult with care and support needs is (or is at risk of becoming) a victim of forced marriage, working with the police will be an important component of any response. (*But* note 10.5 Safe Enquiry and 10.6 Confidentiality and Information Sharing below). The police are always the lead organisation in responding to such concerns. However the skills and knowledge of all relevant partners should be involved in working to understand the situation and plan any action required.

**10.4 The “One Chance” Rule;** all practitioners working with victims of forced marriage and honour based violence need to be aware of the “one chance” rule. That is, there may be only one chance to speak to a potential victim and one chance to prevent the abuse from taking place. (For example where the adult is about to leave the UK, and then denied access to the legal protections that can apply here).

**10.5 Safe Enquiry:** It is essential that when working with suspected victims that; practitioners take steps to ensure their actions do not cause the adult to be placed at greater risk of harm than they are already. Safe enquiry means ensuring potential perpetrators do not become aware of enquiries until risks are understood and protective measures put in place.

For guidance on safe enquiry, see

<https://www.local.gov.uk/sites/default/files/documents/adult-safeguarding-and-do-cfe.pdf>

- **10.6 Confidentiality and information sharing;** Because of the risk of the adult coming to harm, including death, the importance of confidentiality and appropriate information sharing are especially critical for anyone threatened with, or already in, a forced marriage. The adult could be put at extreme risk of harm if family, friends or members of the community learn that the adult has shared information with a professional about a forced marriage (see 10.5 above).

Practitioners must:

- Be clear about when confidentiality can be promised and when information may need to be shared. Sharing information about the adult (for example, with

the Police - see 10.3, but bearing in mind the principles of Safe Enquiry in 10.5 above) should be done with the adult's informed consent wherever possible

- Understand the difference between breaking confidence (e.g. involving the family without the individual's consent) and sharing information with other practitioners to protect the individual from significant harm
- Where it is necessary to share information with other agencies to protect the adult, make sure this happens at the earliest opportunity.
- If the adult is assessed as lacking capacity to make that decision, then the principles of the Mental Capacity Act must be applied, and the views of their advocate sought.

**10.7 Take a victim-centred approach (Making Safeguarding Personal)** - As in all adult safeguarding practice, all practitioners should ensure that:

- Victims are listened to and they are able to communicate their needs and wishes. This may mean taking steps to support them to express their view.
- Victims are given accurate information about their rights and choices.
- Victim's wishes are respected about the level of intervention they require.
- Where an adult appears to lack the mental capacity to make decisions that the principles of the Mental Capacity Act are applied and Best Interest decisions made where necessary

**10.8 Legal advice** – Each agency involved should seek advice from their Legal adviser to establish what legal options may be available and appropriate before planning interventions to protect an adult and what role each agency will hold.

**10.9 Never engage in attempts at family counselling, mediation, arbitration or reconciliation**

Due to the nature of forced marriage and honour-based violence/domestic abuse the practice of attempting to resolve cases through family counselling, mediation, arbitration and reconciliation should *never* be attempted.

**10.10 Never use family members, friends or community members as interpreters.** It can increase risk of harm or bring forward a marriage

**10.11 Assess risk** – Forced marriage is a form of domestic abuse involving coercion; as with other circumstances of domestic abuse/coercive control, undertake multi-agency risk assessments on a case-by-case basis and ensure risks identified are managed appropriately. Multi-Agency Public Protection Arrangements (MAPPA) and Multi-Agency Risk Assessment Conferences (MARAC) play a role in managing the significant risk to individuals facing forced marriage.

**10.12 Be aware that some circumstances increase risks for the adult and others:**

- An adult with care and support needs who has been forced into a marriage and abandoned by a partner may be at greater risk of the same abuse occurring again

- The risk of forced marriage for other family members is higher where one person has already been a victim
- As with other forms of domestic abuse, the victim is likely to be at higher risk of harm if it is known that they are planning to try to escape or is about to disclose information to others.

**10.13 Record keeping.** Special care should be taken to ensure all records are kept secure to prevent unauthorised access by those within the broader community who may potentially pass on confidential information to a victim's family. Records should only be available to those directly dealing with the case.

**10.14 The Forced Marriage Unit.** (FMU) will give advice if someone is already abroad or if there is a risk of being taken abroad. However an agency should first discuss a case in a multi-agency setting and contact its own legal services team to see what legislation can protect the adult before contacting the FMU.

**Call: 020 7008 0151** (Mon-Fri: 09.00-17.00) **Email: [fmu@fco.gov.uk](mailto:fmu@fco.gov.uk)** , or visit <https://www.gov.uk/guidance/forced-marriage>

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