

Multi-agency practice guidelines: preventing and responding to forced marriage - update 2014

Acknowledgements

These practice guidelines have been updated in accordance with the Anti-Social Behaviour Crime and Policing Act 2014, which created a specific criminal offence of forced marriage in Scotland, England and Wales. This guidance covers the specific offence relating to Scotland.

Police Scotland, Shakti Women's Aid, NHS Greater Glasgow and Clyde, Hemat Gryffe Women's Aid, Amina Muslim Women's Resource Centre and Roshni have supplied case studies.

The first issue (2011) of the guidelines was compiled by Shirley Henderson with assistance from the Scottish Government forced marriage practitioner guidelines reference group. The 2014 review group comprised:

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We would like to thank the many individuals who read and commented on drafts including:

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We would also like to thank the Forced Marriage Unit for allowing us to use and adapt case studies and other materials.

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Key practice messages

Always remember the 'one chance' rule: you may only have one chance to speak to a potential victim of forced marriage and, therefore, only one chance to save a life.

About forced marriage

- Forced marriage is an indefensible practice that is recognised across the UK as a form of violence against women and men, domestic abuse and, when children are involved, child abuse
- Under the Anti-Social Behaviour, Crime and Policing Act 2014, forcing someone into marriage is a criminal offence in Scotland
- Forced marriage is also a criminal offence in England and Wales under the same Act
- This Act provides an additional layer of protection to victims from a practice that is not only a fundamental breach of human rights, but is also often accompanied by physical, psychological, financial, sexual and emotional abuse
- Everyone has a right to enter into marriage with their full and free consent and to make decisions about their lives
- A forced marriage is a marriage in which one or both spouses do not (or, in the case of children/young people/adults at risk, cannot) consent to the marriage and coercion is involved. Coercion can include physical, psychological, financial, sexual and emotional pressure, threatening conduct, harassment, threat of blackmail, use of deception and other means. It is also 'force' to knowingly take advantage of a person's incapacity to consent to marriage or to understand the nature of the marriage. Coercion may be from parents, other family members and the wider community
- Forced marriage is a form of gender-based violence and, when children are involved, child abuse. It is associated with other forms of domestic abuse and 'honour-based' violence
- Forced marriage can also be associated with human trafficking. Human trafficking involves moving, harbouring, transferring or receiving individuals using duress or deception for the purposes of exploitation. A forced marriage can be classified as exploitation if certain conditions are met. For instance, in the UK, children have been forced into marriage and trafficked to maintain

family ties, improve a family's economic position and for spouses to gain permanent residence in the UK. A forced marriage can also be the result of trafficking, with victims forced into 'servile' marriages and related exploitation, for example being used as unpaid and forced labour

Guidance and information on human trafficking can be found at:

<http://www.saferglasgow.com/what-we-do/support-services-for-victims/support-to-victims-of-human-trafficking.aspx>

<http://sigbi.org/scotland-south/files/2013/11/TARA-info-leaflet-2013.pdf>

- Forced marriage is different to arranged marriage in which the families of both spouses take a leading role in arranging the marriage but the prospective spouses have the choice whether or not to accept the arrangement. This tradition has existed successfully in many communities and countries for a very long time. But if the spouse changes their mind and is forced to go ahead with the marriage, it is considered a forced marriage
- Women are usually the victims of forced marriage but men can be victims too. People with physical and learning disabilities may be forced into marriage by families wanting to ensure their long-term care. These guidelines provide information relevant to practitioners assisting victims of all sexual orientations or gender identities, including non-binary identities. If an individual discloses that they are transgender, they should be treated as the gender with which they identify
- Victims are under enormous cultural pressure to conform to the wishes of family and community. This is often accompanied by severe physical, emotional and sexual abuse. It is not uncommon for victims to be killed (so-called 'honour' killing) or to commit suicide
- The circumstances of forced marriage are such that victims may remain with or return to families and communities or not be able to follow through on actions. This is not a failure on their part. Stress to victims that your service is always available to them

Legal context

- Forced marriage is an abuse of children's rights under the UN Convention on the Rights of the Child. It is also an abuse of the basic human rights of children, young people and adults, as set out in the European Convention on Human Rights and is directly contrary to the domestic laws of Scotland and the other UK countries
- Forcing someone to marry or taking advantage of their lack of understanding to trick them into taking part in a marriage is against the law in Scotland; so too is taking someone away from Scotland, against their will, to be married elsewhere. There may be associated criminal activities such as abduction; physical abuse; and threats

- The law in Scotland provides both civil and criminal protection
- Forced Marriage Protection Orders (under the Forced Marriage etc. (Protection and Jurisdiction)(Scotland) Act 2011) (referred to throughout this document as the 'Forced Marriage Act') aim to protect people who are threatened with, or who are already in, a forced marriage; the person at risk can apply for these, or third parties can apply on a victim's behalf
- Section 121 of the Anti-Social Behaviour Crime and Policing Act 2014, (referred to throughout this document as 'the 2014 Act'), makes forcing someone to marry a criminal offence in England and Wales
- There are complexities associated with factors such as immigration status; nationality; dual nationality and whether the victim is in Scotland, elsewhere in the UK or overseas. These complexities affect how you can assist victims

Focus on safety and protection

- Forced marriage affects people from many communities and cultures. It is important to use your existing structures, policies and procedures for safeguarding children; adults with support needs; and victims of domestic abuse. For children under 18, refer to social work services. They will implement the correct protection procedures depending on the specific circumstances
- Always focus on the safety and protection of victims and avoid contributing to risk
- Listen carefully to the concerns of the victim, understand the circumstances which have brought them to you, and explain their options
- Always take the issue and the concerns of the victim seriously and recognise the potential risk of very significant harm: many practitioners underestimate, or find it hard to believe the lengths that families go to in order to force a marriage and that families do kill in the name of 'honour'
- Never attempt family counselling, mediation, arbitration and reconciliation if forced marriage is an issue because this can put victim(s) at further risk
- Never share information with family/friends/community members; and, if sharing information with other practitioners in your own or other agencies, only do so if necessary to protect victims
- Always store information about the case securely, with restricted access and in compliance with record management procedures
- Remember that family/community members may work in your agency

- Remember that a victim's life may be at stake
- Remember that under the Forced Marriage Act, a Forced Marriage Protection Order (FMPO) can be sought. The terms of orders issued under the Act can be tailored to meet the specific needs of victims. Criminalising forced marriage added an additional offence. Each case is different and may require a different approach
- An FMPO may run in tandem with criminal investigation/proceedings. Whilst a victim may not wish criminal proceedings to go ahead, the COPFS Prosecution Code sets out the decision-making process which the Crown follows when it receives a report of a criminal offence. It sets out both the evidential and the public interest considerations relevant to decision making. Appendix at section 24 (page 156) sets out COPFS objectives and considerations in making decisions
- The consent of the victim is not a prerequisite for criminal proceedings. The views of the victim are one factor for prosecutors to consider when deciding whether to initiate or continue with criminal proceedings in a case. However, prosecutors have a duty to make decisions based on the wider public interest
- Remember, if you or your organisation are unsure about how best to respond, to ask for advice

One chance checklist

You may only have one chance to speak to a potential victim of forced marriage and, therefore, only one chance to save a life

- See the victim¹ on their own – even if they are accompanied by others
- See them immediately in a secure and private place where you will not be overheard
- Reassure them about confidentiality (in line with your organisation's policy) and explain that you will not give information to her family/friends or community
- Accept what they say
- Explain all the options* to her and their possible outcomes
- Recognise and respect her wishes
- Assess the risk they face by conducting a thorough risk assessment
- Contact, as soon as possible, the lead worker responsible for forced marriage. For children under 18 refer to social work services who will implement the correct protection procedures depending on the specific circumstances
- Agree a way to contact them safely (for example agree a code word)
- Obtain full details to pass on to the lead worker and record these safely
- Give them (or help them memorise) your contact details and/or those of a support agency such as Women's Aid
- Consider the need for immediate police involvement, protection and placement away from the family and arrange this if necessary; this includes any action to stop them from being removed from the UK
- Do everything you can to keep her safe
- Get immediate advice if you are not sure what to do

DO NOT

- Send them away or let them leave without a safety plan and follow up arrangements
- Approach their friends/family or community unless she asks you to do so
- Approach community leaders for advice
- Share information with anyone without their express consent (unless there is a risk of immediate harm to their or any children or they lack the capacity to give consent or she is unable to give informed consent)
- Attempt to mediate with the family

***This may be in tandem with criminal investigation/proceedings (see page 8)**

¹ Victims can be male or female, but are most likely to be the latter. See page 21.

Section 1: Background information

'Marriage shall be entered into only with the free and full consent of the intending spouses.' Universal Declaration of Human Rights, Article 16(2)

1. Background
2. Advice and assistance for victims and practitioners
3. Definitions

1. Background

Legislation

The legislation making forced marriage an offence in Scotland is contained in section 122 of the Anti-social Behaviour, Crime and Policing Act 2014 which came into effect in Scotland on 30 September 2014:

www.legislation.gov.uk/ukpga/2014/12/pdfs/ukpga_20140012_en.pdf

The 2014 Act states that:

1. A person commits an offence under the law of Scotland if he or she:
 - (a) uses violence, threats or any other form of coercion for the purpose of causing another person to enter into a marriage, and
 - (b) believes, or ought reasonably to believe, that the conduct may cause the other person to enter into the marriage without free and full consent.
2. In relation to a victim who is incapable of consenting to marriage by reason of mental disorder, the offence under subsection (1) 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 coercion).
3. A person commits an offence under the law of Scotland if he or she:
 - (a) practises any form of deception with the intention of causing another person to leave the United Kingdom, and
 - (b) intends the other person to be subjected to conduct outside the United Kingdom that is an offence under subsection (1) or would be an offence under that subsection if the victim were in Scotland.
4. 'Marriage' means any religious or civil ceremony of marriage (whether or not legally binding).
5. 'Mental disorder' has the meaning given by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003.
6. It is irrelevant whether the conduct mentioned in paragraph (a) of subsection (1) is directed at the victim of the offence under that subsection or another person.
7. A person commits an offence under subsection (1) or (3) only if, at the time of the conduct or deception:
 - (a) the person or the victim or both of them are in Scotland,
 - (b) neither the person nor the victim is in Scotland but at least one of them is habitually resident in Scotland, or

(c) neither the person nor the victim is in the United Kingdom but at least one of them is a UK national.

8. 'UK national' means an individual who is:

- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;
- (b) a person who under the British Nationality Act 1981 is a British subject; or
- (c) a British protected person within the meaning of that Act.

9. A person guilty of an offence under this section is liable:

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine or both.

Section 121 of the Act introduced a similar offence for England and Wales. Forcing someone to marry is a specific criminal offence across the UK:

www.legislation.gov.uk/ukpga/2014/12/section/121/enacted

Other general offences

Although forced marriage is a specific criminal offence, there are also other general offences which may be committed when a person is being forced into marriage

Perpetrators, usually parents or family members, could also be prosecuted for offences including stalking, threatening and abusive behaviour, assault, kidnap, abduction, theft (of passport), threats to kill, imprisonment and murder. Sexual intercourse without consent is rape, regardless of whether this occurs within a marriage. Criminalisation did not remove these offences, and concerns/reports of forced marriage should be looked at with the 'big picture' in mind.

Forced Marriage Protection Orders (FMPOs) can also be sought under the Forced Marriage Act in addition to any investigation or proceedings for criminal offences. The Forced Marriage Act makes provision for protecting both children and adults at risk of being forced into marriage and offers protection for those who have already been forced into marriage. The terms of orders issued under the Forced Marriage Act can be tailored to meet the specific needs of victims.

The Forced Marriage Act can be read in full online at www.legislation.gov.uk/asp/2011/15/pdfs/asp_20110015_en.pdf

Some forced marriages are legally valid until they are annulled or a divorce is granted by the court. Others are not legally valid but may also need to be annulled.

There are strict legal requirements governing whether a marriage is valid under Scots civil law, and across the UK generally. The rules for recognising a marriage vary depending on which country the marriage took place. When considering the

validity of a marriage, particularly a marriage which took place overseas, you should seek specialist legal advice. Although agencies should not assume that a marriage is invalid because it was forced, this will usually be the case. Additional difficulties can arise if the victim cannot provide a marriage certificate.

Guidance

The Scottish Government has produced the following guidance for practitioners in the statutory and third sectors, public authorities and legal professionals:

1. Multi-agency practice guidelines, updated 2014
2. Statutory guidance: the Scottish Government published forced marriage statutory guidance under section 11 of the Forced Marriage Act. The statutory guidance sets out the responsibilities of chief executives, directors and senior managers within public bodies and partnerships involved with handling cases of forced marriage. It covers roles and responsibilities, accountability, training, inter-agency working and information sharing, risk assessment and record keeping. This guidance was updated in 2014, available at: www.scotland.gov.uk/forcedmarriageupdate2014
3. Guidance for legal professionals

Aims of the multi-agency practice guidelines

These practice guidelines aim to inform frontline practitioners who are responsible for protecting children and adults from the abuse associated with forced marriage.

You should use existing structures, policies and procedures designed to protect children, adults at risk and those experiencing domestic abuse. But, in doing so, you must be mindful of the specific risks associated with forced marriage. Risks to victims may be increased by all forms of family counselling, mediation, arbitration and conciliation; by failing to share or store information appropriately or safely; by involving families; and by breaches of confidentiality.

When supporting victims generally or in supporting them to obtain an FMPO, you should also consider your role in gathering evidence to support any prosecutions under the 2014 Act.

Given the nature of forced marriage, no single agency can meet all the needs of someone affected by forced marriage. These practice guidelines, therefore, aim to encourage practitioners to work together safely to protect victims. This approach is also consistent with the Scottish Government's emphasis on a multi-agency response to tackling domestic abuse/violence against women and responding to children and adults at risk of harm.

There are multi-agency partnerships in all local authority areas to tackle violence against women. They are a good source of information and support for multi-agency working on these issues. Other relevant partnerships include Community Planning; Community Safety; Multi-Agency Risk Assessment Conferences; Multi-Agency

Public Protection Arrangements; Multi Agency Tasking and Coordinating (MATAC) meetings; Child Protection and Adult Protection Committees.

Who the multi-agency practice guidelines are for

These guidelines are for all frontline staff and volunteers within agencies which are likely to come across adults or children and young people threatened with or in a forced marriage.

Chapters 15 to 20 are specifically aimed at those working within health, education, police, child protection, adult support and protection and housing. However, these sections and the rest of the document will be of interest to a wide range of practitioners including Registrars, Children's Reporters, solicitors and those working in voluntary organisations.

The guidelines have been adapted from materials already developed by the UK Forced Marriage Unit (FMU) (see page 19). A Scottish Government reference group representing statutory and voluntary organisations has contributed to ensure that they are relevant to practitioners in the Scottish context.

Status of the multi-agency practice guidelines

This document complements the statutory guidance.

The guidelines fit with the Scottish Government's commitment to tackling domestic abuse and all forms of violence against women². Forced marriage is a form of domestic abuse and should be treated as such. Ignoring the needs of and risks to victims is potentially dangerous and would be viewed as a breach of professional responsibility.

Terminology: male/female victims

See definitions on page 21.

Given prevalence rates (82% of cases referred to the Forced Marriage Unit in 2013 involved women) and the fact that the consequences are different for women and men, the guidelines refer to victims of forced marriage as 'women' and focus mainly on women's needs which are different from those of men. **This is in no way intended to diminish the experience of, or risks posed to, those who do not identify as women.**

² Equally Safe: www.scotland.gov.uk/Publications/2014/06/7483

Much of the guidance applies to any individual facing forced marriage and everyone should be given the same level of assistance and respect when they seek help. For more information on supporting male victims see the Men's Advice Line at <http://www.mensadvice.org.uk/pages/male-victims-of-forced-marriage.html>

LGBT³ people experiencing forced marriage may find it difficult to seek support as a result of fearing a homophobic, biphobic or transphobic response from relatives, communities and services. Additionally it can be difficult for GBT men⁴ to speak out about the forms of gender-based violence they face due to the pressures of masculinity and stereotypes.

Findings from research suggest that forced marriage involving people with learning disabilities may occur at a similar rate for men and women, although the consequences are still likely to affect women disproportionately. More information on this is at www.fco.gov.uk/forcedmarriage

Reducing harm

The guidelines focus on specific areas where practitioners may inadvertently endanger a victim and set out what practitioners can do, both individually and in partnership with other agencies, to reduce harm.

The UK context

Most of the legislation, policies and procedures referred to in these guidelines are relevant to devolved matters which are the responsibility of the Scottish Government. However, key aspects, notably immigration affairs, no recourse to public funds (see page 98) and nationality are reserved matters (i.e. UK-wide) and, consequently, the responsibility of the UK Government. Immigration affairs are dealt with by the Home Office UK Visas and Immigration (UKVI) www.gov.uk/government/organisations/uk-visas-and-immigration

Some victims may move between Scotland and other jurisdictions in the UK. This may add complications. For example, whereas young people are regarded as adults in Scotland from age 16 (but see definitions on page 23), the age of majority in England is 18. This may affect the availability of services. It may be important to point out any differences to colleagues south of the border and for you to be aware of those operating elsewhere in the UK.

The Forced Marriage Unit is a joint initiative of the Home Office and the Foreign & Commonwealth Office and has a UK-wide remit (see advice and assistance for

³ 22 of the victims identified as LGB or T: www.pinknews.co.uk/2013/03/06/uk-22-cases-of-lgbt-people-made-to-enter-into-forced-marriages-in-2012/

⁴ 15% of victims identified by the Forced Marriage Unit are men: www.mensadvice.org.uk/pages/male-victims-of-forced-marriage.html

victims and practitioners on page 17). Some victims may move between Scotland and overseas jurisdictions. Where cross-border or international issues arise, it is recommended that you advise and seek assistance from the FMU.

2. Advice and assistance for victims and practitioners

There are often complexities with forced marriage associated with immigration status, nationality, different legal systems, where the victim is and where the marriage took or is intended to take place.

The specific circumstances of each case will influence who you might approach for advice or assistance either for yourself as a practitioner or on behalf of a victim.

Shakti Women's Aid, Hemat Gryffe Women's Aid, Amina, the Muslim Women's Resource Centre, Roshni and Saheliya have considerable expertise of working with victims in Scotland (see page 144) and the Forced Marriage Unit (see below) across the whole UK. The FMU may be particularly helpful if a woman is in, or moving to England or out of the UK.

Overseas, UK Embassies and High Commissions can offer consular assistance to British nationals plus, in certain circumstances, European Union or Commonwealth nationals whose country does not have a local Embassy or Consulate in the country concerned. They cannot offer assistance to European Union or Commonwealth nationals in the country of their own nationality.

When a British national approaches a British Embassy or High Commission, the Foreign and Commonwealth Office (FCO) may try to repatriate her as soon as possible. This means that agencies in the UK may receive little notice about her arrival. Sometimes the FCO asks the police or a local authority for assistance when a British national is being repatriated to the UK from overseas.

If an individual is a British national and also holds the nationality of another country, she is considered to be a dual national (see page 99). This may mean that the authorities in the country of her other nationality may view her as being solely or primarily a national of that country and treat her accordingly. Consequently, those authorities may not see the British Embassy or High Commission as having any right to assist her or may not permit any assistance to be given.

If the FCO thinks that there is a special humanitarian reason to do so, it will consider offering assistance to dual nationals in the country of their other nationality. Forced marriage is one of those circumstances where such an exception may be made.

The Forced Marriage Unit (FMU)

The FMU is a joint FCO and Home Office unit. It offers advice to anyone in the UK, regardless of nationality, and specific assistance to British nationals facing forced marriage abroad. In 2013, the Forced Marriage Unit (FMU) received calls about more than 1,300 possible or actual cases of forced marriage cases. However, forced marriage still remains hidden, and many more cases remain unreported. Forced marriage affects both women and men. The cases reported to the FMU in 2013 involved 74 different countries.

The FMU works with government departments, statutory agencies and voluntary organisations on policy and runs an outreach programme. It also offers a casework service as follows:

- Public helpline offering confidential advice and support to victims, and practitioners handling cases of forced marriage. Caseworkers in the unit have experience of the cultural, social and emotional issues surrounding forced marriage
- UK cases: information and support to those who fear they will be forced into marriage and can talk with them about their options
- Overseas cases: can assist British nationals facing forced marriage abroad by helping them to a place of safety and to return to the UK; also can assist non-British nationals facing forced marriage abroad by referring them to local organisations which can help
- Immigration cases: can help those who have already been forced into marriage to explore their options, including assisting those who are being forced to sponsor a spouse's visa for settlement in the UK

The FMU can assist a British national's return to the UK by providing emergency travel documents, helping to arrange flights and, if possible, arranging temporary accommodation whilst the woman is overseas. The FCO may ask the police to meet an individual on arrival in the UK, in case family members try to abduct them at the airport.

The FCO is obliged to ask the victim or trusted friends to fund the cost of repatriation. In some cases, repatriation has been funded by a local authority. The FMU, in certain very exceptional circumstances, may provide a loan from public funds to help a victim return to the UK, but only when all other avenues have been exhausted. She has to sign an agreement to pay the loan in full, and to secure the loan by giving up her passport to consular staff who can issue her with an emergency travel document valid for a single journey to the UK. Once the loan is repaid in full, her passport is returned, or a new passport issued.

Regardless of how the cost is finally met, this matter should never delay the process of getting the victim to safety.

When to contact the FMU

You should alert the FMU if you know, or suspect, that a victim has been, or is being, taken out of Scotland, or abroad. It can assist in alerting the police and authorities at points of departure so that the victim and accompanying persons can be detained and prevented from leaving the UK.

The FMU is happy to talk to practitioners handling cases of forced marriage at any stage in a case. It can offer information and advice on responding to forced

marriage, including overseas assistance and how to approach victims. The FMU can also speak at conferences, run training workshops, and provide free leaflets and posters.

Contact details

Telephone: +44 (0) 20 7008 0151

Email: fmufco.gov.uk

Email for outreach work: fmufcooutreach.gov.uk

Facebook: Forced Marriage page

Twitter: @FMUnit

Address: Forced Marriage Unit, Room K4.7, Consular Directorate, Foreign & Commonwealth Office, London, SW1A 2AH

For emergencies out of hours, phone 020 7008 1500 and ask for the Global Response Centre.

Women's Aid in Scotland

Women's Aid provides advice, support and safe refuge for women, children and young people experiencing domestic abuse. There are Women's Aid groups across Scotland, and all should be able to provide advice and assistance both to women victims of forced marriage and to practitioners.

Services available to women include:

- Assistance into safe temporary accommodation either in a refuge or with a local authority; this could be within the immediate local area or elsewhere
- One-to-one emotional and practical support
- Information about a wide variety of legal issues and assisting them to get legal advice
- Advocacy to help secure benefits, housing and legal protection
- Resettlement support
- Language support
- Children and young people's services

Children and young people's workers also offer support to young people at school and/or other places where it is safe for them to do so.

Shakti Women's Aid and Hemat Gryffe Women's Aid have particular expertise in working with black minority ethnic women their children and with young people, including those in, or threatened with, forced marriage. Both services offer an outreach service to young women experiencing domestic abuse in the context of forced marriage and who are not yet ready to leave their homes.

See page 144 for contact details.

Support for practitioners

Supporting someone who is at risk of, or already in a, forced marriage can be stressful. It can be distressing to hear accounts of trauma and abuse and practitioners sometimes worry that they may be overwhelmed by it. It is also common to feel frustrated or helpless if you cannot 'solve' the problem or if you find it difficult to accept or understand how a woman is somehow 'not able' to leave an abusive situation. It is important to recognise how you feel and ask for support or guidance from a colleague or line manager.

You or a colleague may have personal experience as a victim of such abuse. If so, it is important to recognise how this experience is affecting you/your colleague. Your agency should have an employee policy (for example domestic abuse policy, stalking policy) to guide how you/your colleague can be supported at work.

If you are concerned that a colleague might be involved in perpetrating a forced marriage, check your agency's employee policy for guidance about who to approach or how to address this issue.

For health workers, NHS Scotland has produced a gender-based violence employee (Partnership Information Network) PIN guideline which includes forced marriage: www.gbv.scot.nhs.uk/

Further information and training

See contacts on page 144.

The statutory guidance requires organisations to ensure that their staff are aware of and trained to respond to forced marriage. The contacts section lists various organisations which can give you more information about training providers. See also www.womenssupportproject.co.uk/vawtraining

3. Definitions

The guidelines use the following definitions:

Forced marriage

A forced marriage is a marriage in which one or both spouses do not (or, in the case of children and some adults at risk, cannot) consent to the marriage and coercion is involved. Coercion can include verbal, physical, psychological, financial, sexual and emotional pressure and taking advantage of a person's inability to give consent.

For the definition of forced marriage, including coercion at law see the 2011 Forced Marriage Act at: www.legislation.gov.uk/asp/2011/15/pdfs/asp_20110015_en.pdf

The 2014 Act makes forcing a person into marriage a criminal offence. See definition at: www.legislation.gov.uk/ukpga/2014/12/pdfs/ukpga_20140012_en.pdf

Arranged marriage

An arranged marriage is one in which the families of both spouses take a leading role in arranging the marriage but the choice whether or not to accept the arrangement remains with the prospective spouses.

Honour-based violence

The terms 'honour crime', 'honour-based violence' and 'izzat' embrace a variety of crimes of violence (mainly but not exclusively against women), including physical abuse, sexual violence, abduction, forced marriage, imprisonment and murder where the person is being punished by their family or their community. They are punished for actually, or allegedly, 'undermining' what the family or community believes to be the correct code of behaviour. In transgressing this, 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. 'Honour crime' may be considered by the perpetrator(s) as justified to protect or restore the 'honour' of a family.

Violence against women

The Scottish Government defines forced marriage as a form of violence against women. The full definition of violence against women is in the Scottish Government's violence against women strategy: Equally Safe⁵.

⁵ www.scotland.gov.uk/Publications/2014/06/7483

Gender-based violence

This can be defined as 'Any form of violence used to establish, enforce or perpetuate gender inequalities and keep in place gendered orders. In other words gender based violence in a policing mechanism.'⁶ The European Commission defines gender based violence as a 'form of discrimination and a violation of the victim's fundamental freedoms. It can be defined as violence directed against a person because of that person's gender (including gender identity/expression) or as violence that affects persons of a particular gender disproportionately'.⁷ Gender-based violence disproportionately affects women and LGBT⁸ people and encompasses a spectrum of abuse that includes domestic abuse, rape and sexual assault, childhood sexual abuse, sexual harassment, homophobic, biphobic and transphobic bullying, stalking, commercial sexual exploitation, and harmful traditional practices such as female genital mutilation (FGM), forced marriage and so-called 'honour' crimes'.

Domestic abuse

The National Strategy to Address Domestic Abuse in Scotland (2000)^{9 10} states:

'Domestic abuse (as gender-based abuse), can be perpetrated by partners or ex-partners and can include physical abuse (assault and physical attack involving a range of behaviour), sexual abuse (acts which degrade and humiliate women and are perpetrated against their will, including rape) and mental and emotional abuse (such as threats, verbal abuse, racial abuse, withholding money and other types of controlling behaviour such as isolation from family or friends).'

The strategy recognises that: *'Domestic abuse is most commonly perpetrated by men against women and takes a number of specific and identifiable forms. The existence of violence against men is not denied, nor is the existence of violence in same sex relationships, nor other forms of abuse, but domestic abuse requires a*

⁶ James Lang 2002

⁷ http://ec.europa.eu/justice/gender-equality/gender-violence/index_en.htm

⁸ For definitions see page 27

⁹ The National Strategy to Address Domestic Abuse in Scotland (2000)
www.scotland.gov.uk/Resource/Doc/158940/0043185.pdf

¹⁰ There are other national definitions as included within the Police Scotland/COPFS protocol
http://www.scotland.police.uk/assets/pdf/keep_safe/175573?view=Standard

response which takes account of the gender specific elements and the broader gender inequalities which women face.'

It also states:

'...in accepting this definition, it must be recognised and taken into account that, particularly among black and minority ethnic communities, other family members connected to a woman through marriage may be involved in, or may participate in the abuse of the woman. In certain cases, abuse is perpetrated by other family members, even without the knowledge of the partner. In addition, there is abuse of women by members of their own families in the context of forced, as opposed to arranged, marriages or as a result of their failed marriages or divorce.'

It is important to be aware that domestic abuse also impacts upon 1 in 4 LGBT people in their lifetimes. Evidence shows that gay and bisexual men are at a particular high risk of rape, sexual assault and violence as are transgender people. It is therefore crucial that their specific needs are included and explored.

Victim

The term 'victim' is used throughout this document for the sake of simplicity to refer to people who are, or have been, or are at risk of being forced into marriage against their will. This term is not used to connote weakness or inferiority.

Perpetrator

The term perpetrator is used to refer to the people who are forcing someone to marry. This may include the spouse or prospective spouse, close and extended family members and members of the wider community.

Relevant third party (RTP)

Under the Forced Marriage Act, a relevant third party (RTP) can apply for a Forced Marriage Protection Order (see page 75) without the permission of the court. RTPs are specified as a local authority, the Lord Advocate and others specified by Scottish Ministers. Any other third party can apply for an FMPO but they need the court's permission to do so.

Child, children and young people

In this guidance, the term 'children' is used to mean 'children and young people'.

A child can be defined differently in different legal contexts. Section 93(2)(a) and (b) of the Children (Scotland) Act 1995, as amended by schedules 5 and 6 of the Children's Hearings (Scotland) Act 2011, defines a child in relation to the powers and duties of the local authority.

This guidance is designed to include children and young people up to the age of 18. However, the protective interventions that can be taken depend on the circumstances and legislation relevant to that child or young person.

Young people aged between 16 and 18 are potentially vulnerable to falling between the gaps. Local services must ensure that there are processes for staff to offer support and protection as needed.

If a young person between the ages of 16 and 18 requires protection, services should consider which legislation, if any, applies. This depends on the young person's circumstances as well as the particular legislation or policy framework. Special consideration should be given to the issue of consent, and whether an intervention is possible if a young person has withheld consent.

This heightens the need for local areas to establish clear links between their Child and Adult Protection Committees and to have clear guidelines. The Adult Support and Protection (Scotland) Act 2007 may apply:

www.scotland.gov.uk/Publications/2009/01/30112831/0

The priority is to ensure that a vulnerable young person who is, or may be, at risk of significant harm is offered support and protection, regardless of whether they access services in a child or adult protection framework. Each young person's circumstances and age are key factors in determining the mandatory legal measures to apply.

Child abuse and neglect

Abuse and neglect are forms of maltreatment of a child. Somebody may abuse or neglect a child by inflicting, or by failing to act to prevent, significant harm to the child. Children may experience abuse or neglect in different ways and the following types are set out in the Scottish Government's National Guidance for Child Protection in Scotland, refreshed in 2014¹¹: physical abuse; sexual abuse; emotional abuse; neglect. If a child is involved in a forced marriage, this should always be considered under a child protection response.

Child in need

Children who are defined as being 'in need' under section 93(4) of the Children (Scotland) Act 1995¹², include those whose vulnerability is such that they are unlikely to reach or maintain a reasonable level of health or development, or their health or development will be significantly impaired, without the provision of services, plus those who are disabled. Local authorities have a duty to protect and promote the welfare of children in need.

¹¹ Scottish Government's National Guidance for Child Protection in Scotland (2014): <http://www.scotland.gov.uk/Publications/2014/05/3052>

¹² Children (Scotland) Act 1995: www.legislation.gov.uk/ukpga/1995/36/contents

Significant harm

The concept of 'significant harm' is complex and subject to professional judgement based on a multi-agency assessment of the circumstances of the child and their family. If there are concerns about wellbeing, harm, abuse or neglect, these must be shared with the relevant agencies so that they can decide together whether the harm is, or is likely to be, significant. It is essential that, when considering the presence or likelihood of significant harm, the impact (or potential impact) on the child takes priority and not simply the alleged abusive behaviour. See also the Scottish Government's National Guidance for Child Protection in Scotland (2014).

Getting It Right for Every Child

Getting It Right for Every Child (GIRFEC) is the national approach to improving the wellbeing of children and young people. Through policy and services at both national and local level, the GIRFEC approach:

- Puts the best interests of the child at the heart of decision making
- Takes a holistic approach to the wellbeing of a child
- Works with children, young people and their families on ways to improve wellbeing
- Advocates preventative work and early intervention to support children, young people and their families
- Believes professionals must work together in the best interests of the child

The Children and Young People (Scotland) Act 2014 is rooted in the GIRFEC approach, and put several key initiatives into statute, including the Named Person and the single Child's Plan. Other Scottish Government initiatives underpinned by GIRFEC principles include the Children's Hearing system; the Early Years Collaborative; Early and Effective Intervention/Whole Systems; and the Family Nurse Partnership.

The approach helps practitioners focus on what makes a positive difference for children and young people and how they can act to deliver these improvements. *Getting it right for every child* is being threaded through all existing policy, practice, strategy and legislation affecting children, young people and their families

Adult at risk

The Adult Support and Protection (Scotland) Act 2007¹³ defines adults at risk as adults who:

(a) Are unable to safeguard their own well-being, property, rights or other interests and

¹³ The Adult Support and Protection (Scotland) Act 2007:
www.legislation.gov.uk/asp/2007/10/contents

- (b) Are at risk of harm and
- (c) Because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected

'Risk of harm' for the purposes of subsection (1) is if:

- (a) Another person's conduct is causing (or likely to cause) the adult to be harmed or
- (b) The adult is engaging (or is likely to engage) in conduct which causes (or is likely to cause) self-harm

Learning disability

The term 'learning disability'¹⁴ can be described as follows: 'people with learning disabilities have a significant, lifelong, condition that started before adulthood, which affected their development and which means they need help to understand information; learn skills; and cope independently'. But this is only part of a description. It does not capture the whole person who can be much more - a friend, a family member, a community activist, a student, a parent, an employee or employer to name just a few roles. It is essential to keep in mind all of these possibilities.

A learning disability is a permanent impairment and not to be confused with mental illness, which can vary or be temporary, although people with learning disabilities can also experience mental illness. However, people with learning disabilities are not a homogenous group. Learning disability affects people in different ways.

This does not mean that those with capacity are less vulnerable to forced marriage.

Capacity to consent

Section 122 (2) of the Anti-Social Behaviour Crime and Policing Act 2014 includes specific provision to protect a victim who is incapable of consenting to marriage by reason of mental disorder.

Section 122 (5) goes on to define the meaning of 'mental disorder' as the meaning given by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003.

The Adult Support and Protection (Scotland) Act 2007 places the issue of consent in the context of protecting adults at risk. Section 3 of that Act defines 'adults at risk' as are adults who:

- (a) Are unable to safeguard their own well-being, property, rights or other interests
- (b) Are at risk of harm, (harm is defined as including all harmful conduct and, in particular, conduct which causes physical or psychological harm, unlawful

¹⁴ www.scotland.gov.uk/Publications/2013/06/1123/0

conduct which appropriates or adversely affects property, rights or interests (e.g. theft, fraud, embezzlement or extortion), or conduct which causes self-harm. 'Conduct' is also defined in this section as including neglect and other failures to act) and

- (c) Because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected.

(2) An adult is at risk of harm for the purposes of subsection (1) if:

- (a) Another person's conduct is causing (or is likely to cause) the adult to be harmed or
- (b) The adult is engaging (or is likely to engage) in conduct which causes (or is likely to cause) self-harm

Biphobia: irrational fear of, aversion to, or discrimination against bisexual people.

Bisexual: refers to someone who is emotionally and sexually attracted to women and men.

Gay: refers to someone who is emotionally and sexually attracted to people of the same sex. Some women prefer to refer to themselves as gay women rather than lesbian, although the word gay is most commonly used in reference to men.

Gender identity: refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body and other expressions of gender, including dress, speech and mannerisms.

Homophobia: irrational fear of, aversion to, or discrimination against lesbian, gay and bisexual people.

Intersex: people born with sex chromosomes, external genitalia, or an internal reproductive system not considered biologically 'standard' for either male or female. This definition is a medical model, however, and some intersex people proudly identify as intersex.

Non-binary gender: gender identities which do not fit within the expected binary of male and female. People can feel they are both male and female, neither or a mixture.

Lesbian: refers to a woman who is emotionally and sexually attracted to other women.

LGBTI: acronym for Lesbian, Gay, Bisexual, Transgender and Intersex

Transgender: all-embracing umbrella term for those whose gender identity or expression conflicts with the 'norms' expected by the society they live in.

Transphobia: irrational fear of, aversion to, or discrimination against transgender people.

Section 2: Understanding and approach: information for all practitioners

No marriage shall be legally entered into without the full and free consent of both parties United Nations Convention on consent to marriage, minimum age for marriage and registration of marriages, Article 1

4. Facts about forced marriage
5. Responding to forced marriage: a good practice approach
6. Safety planning
7. Checklist: actions to take in all cases
8. Checklist: information required for all cases

4. Facts about forced marriage

What is forced marriage?

A forced marriage occurs when one or both spouses do not (or, in the case of children and some adults at risk, cannot) consent to the marriage and coercion is involved. Coercion can include physical, psychological, financial, sexual and emotional pressure, threatening conduct, harassment, threat of blackmail, use of deception and other means. It is also force knowingly to take advantage of a person's incapacity to consent to marriage or to understand the nature of the marriage.

The Scottish and UK Governments regard forced marriage as a form of domestic abuse, an abuse of human rights and, when children and young people are affected, child abuse.

There is a direct link between forced marriage and crimes committed in the name of 'honour'. The most extreme examples – 'honour' killings – are committed in the belief that defiled honour can only be redeemed when the source of shame, that is the victim, is removed. This is often done in collusion with relatives and the community.

The difference between forced and arranged marriage

Forced marriage is different from arranged marriage. In an arranged marriage, the families of both spouses take a leading role in arranging the marriage but the choice whether or not to accept the arrangement remains with the prospective spouses.

In forced marriage, one or both spouses do not (or, in the case of children¹⁵ and some adults at risk, cannot) consent to the marriage and coercion is involved.

If families have to resort to violence or emotional pressure to make someone marry, that person's consent has not been given freely and, therefore, it is a forced marriage.

Relationship to domestic abuse

Forced marriage is a particular form of domestic abuse. While forced marriage has its own causes and solutions, understanding it as domestic abuse will help you provide an effective response. It is also important to understand the cultural context within which forced marriage occurs. While the victim's partner or potential partner may perpetrate the abuse, in forced marriage, close and extended family members,

¹⁵ A couple cannot be legally married in Scotland unless both parties are at least 16 on the day of the wedding and are capable of understanding the nature of a marriage ceremony and of consenting to the marriage. Parental consent is not required.

children, siblings, and in-laws are typically involved and responsible. Victims are under enormous pressure to conform to the expectations and demands of their family, and the consequences of not doing so are considerable.

Victims of forced marriage often experience physical, emotional and sexual abuse. Rape, physical, emotional and psychological abuse, forced pregnancy, and restrictions on freedom of dress, behaviour and lifestyle are common. Some women are virtually under 'house arrest' and may only be allowed out if accompanied by family members. They may also have their passports and legal documents removed.

'I felt I had no option. Once they had taken me out of the country there was nothing I could do. I had no contact with anyone but the family. My mother was caught between my feelings and the community's expectations. They made me feel that I would dishonour my family if I didn't marry him.'

Who is affected?

Both men and women are forced into marriage although most cases involve young women and girls aged between 13 and 30. However, there is no 'typical' victim of forced marriage.

Forced marriage is not limited to first marriages and can affect those who are widowed or divorced.

Of 1,302 contacts to the Forced Marriage Unit in 2013, 18 per cent involved a male victim and 82 per cent a female victim.

LGBT people are also victims of forced marriage. Of the above contacts, there were 12 instances which involved victims who identified themselves as lesbian, gay, bisexual or transgender (LGBT). See also www.fco.gov.uk/resources/en/pdf/forced-marriage-lgbt (*sic*) and www.stonewall.org.uk/at_home/hate_crime_domestic_violence_and_criminal_law/9527.asp

Of the above contacts, 97 involved people with disabilities. Evidence suggests that for people with learning disabilities, forced marriage may occur at a similar rate for men and women. Research also indicates that the forced marriage of people with learning disabilities is likely to be significantly under-reported and can differ from the way in which forced marriage presents generally.

Most reported cases in the UK so far have involved South Asian families (Pakistani, Indian and Bangladeshi). This partly reflects the fact that there is a large, established South Asian population here. However, forced marriage commonly occurs across the world, and there have been reported cases in the UK involving East Asian, Middle Eastern, European and African communities.

Forced marriage is not associated with particular religions or religious practice and has been recorded in Christian, Jewish, Hindu, Muslim and Sikh communities.

Some forced marriages take place in Scotland with no overseas element, while others involve a partner coming here from overseas or a British national being sent abroad.

Some cases are immigration-related with victims forced to marry family members in order to facilitate their entry to the UK. More information about legality of marriage to family members is at: www.gro-scotland.gov.uk/files2/registration/RM1-Leaflet.pdf

'People don't realise that men can also find themselves in this situation. I don't know if I could have told anyone even if I'd had the chance to. It's not exactly macho, is it, admitting that you were held hostage by your family and forced to marry someone you'd never met...?'

Prevalence of forced marriage

Many cases of forced marriage, as with domestic abuse generally, go unreported. Many of the families involved do not consider the marriage as 'forced' and many victims are unwilling to speak out. With greater awareness of the help available, the number of cases reported is likely to increase.

The main support organisations for female victims in Scotland are Shakti Women's Aid in Edinburgh and Hemat Gryffe Women's Aid in Glasgow. In 2013, Shakti Women's Aid supported 25 forced marriage cases and Hemat Gryffe Women's Aid 13 cases.

There is no reliable source of information which captures the cases involving male victims of forced marriage in Scotland.

Born and brought up in Scotland, M was 16 when she approached Women's Aid asking for information on domestic abuse 'for a friend'. She came back the next day asking to speak to the same worker and said that her family were forcing her to marry her cousin, also 16. The family planned to visit their home country in the summer holidays and get her married. Her father was abusing her because of her refusal to cooperate and was threatening to stop her from going to school.

Women's Aid helped M plan her escape from home and go to a refuge in another city. It was difficult for her to leave her mother and siblings. She was extremely protective of them, felt guilty about leaving them and worried about them. She was concerned that domestic abuse against her mother by the extended family would increase. So, after a few days in hiding, she phoned her mother who pressured her to meet. Her mother told her:

- 'Your granddad had a heart attack and is in the hospital and wants to see you'
- 'Your sisters and brothers are very upset and not eating'
- 'If you come back, we will move out of Edinburgh, and leave your dad'

- 'We can't face the community so we are leaving the UK'

Despite intense pressure, M was resolute. Eventually, her mother and siblings returned overseas but phoned constantly asking her to join them. Her mother insisted that M should visit for a short while, 'for the family's honour', and that they would not force her to marry. M finally gave in and left Scotland to meet her mother. She later returned to Scotland with a husband. Her two sisters stayed overseas because the family did not want them to refuse to marry as M had done. Both were engaged to their cousins by the time they were 13.

Motives for forced marriage

Perpetrators of forced marriage often justify it as protecting their children, building stronger families and preserving cultural or religious traditions. They often do not see anything wrong in their actions. They may believe that they are upholding the cultural traditions of their home country although practices and values there may have changed. For adults with support needs, including learning disabilities, families may believe it is the right or only option to secure continuing personal care for that person and may be very open about their intentions.

Some parents come under significant pressure from their extended families to have their daughters/sons married.

Sometimes a marriage agreement is made when a child is an infant. They may go through their entire childhood expecting to marry someone their parents select. They may not know that they have a fundamental human right to choose their own partner. However, they may also be completely unaware, until the marriage is imminent or actually taking place, that they have already been 'promised' in marriage to a complete stranger, or relative, whom they have little or no knowledge about and may never have met.

'I've always wanted to be independent, so I only agreed to go because they said my grandma was sick. It wasn't true; when I got there they showed me new clothes and jewellery and said the wedding would be at the end of the week. They knew I'd be isolated when I got there because I am deaf.'

Motives include:

- Controlling unwanted behaviour, sexuality, sexual orientation or gender identity, including perceived promiscuity, or being lesbian, gay, bisexual or transgender (LGBT), particularly the behaviour and sexuality of women
- Controlling unwanted behaviour, for example, alcohol and drug use, socialising unchaperoned with, or simply speaking to, members of the opposite sex who are not family members, wearing make-up or behaving in what is perceived to be a 'westernised manner'
- Preventing 'unsuitable' relationships, for example, outside the ethnic, cultural, religious or caste group

- Protecting 'family honour' or 'izzat' (see definitions page 20) (for example this might be related to a victim disclosing rape or sexual abuse)
- Responding to peer group or family pressure about conforming to expectations
- Attempting to strengthen family links
- Financial gain or obtaining financial security for the person with a learning disability
- Ensuring land, property and wealth remain within the family
- Protecting perceived cultural ideals
- Protecting perceived religious ideals
- Ensuring care for someone with learning/physical disability when parents or existing carers are unable to fulfil that role or because of mistrust of external social care
- Concerns that younger siblings may be seen as undesirable if older sons or daughters are not already married. This could include marrying off a young person with learning/physical disability because their unmarried status might be seen as a barrier to marriage for their siblings
- Assisting claims for UK residence and citizenship
- Obtaining physical assistance or personal care for ageing parents/spouse

'My family were shocked and very angry when they found out I was gay. They were violent towards me and called me names. My mother tried to calm things but couldn't. I felt guilty that I had caused them pain and let them down. They made me feel as if I owed them. They really believed that if I married who they wanted, I would stop being gay.'

There are no excuses or justifications for forced marriage.

While it is important to be aware of the motives which drive some people to perpetrate forced marriage, you should not accept them as justification. Forced marriage is a violation of children's rights under the UN Convention on the Rights of the Child as well as a form of violence against women and an abuse of human rights under the Universal Declaration on Human Rights.

There is no justification for forced marriage or for practitioners not acting to prevent it.

It cannot be justified on 'cultural' grounds. You may be concerned about cultural sensitivity, but such concerns do not excuse failure to assist victims or to take action (safely) if you suspect that someone is forcing or has forced another into marriage.

It cannot be justified on religious grounds: every major faith condemns it and freely given consent in marriage is a prerequisite of all religions.

Aggravating factors which may increase the risk of forced marriage:

- If a parent dies, especially the father, the surviving parent may think it more urgent to ensure that daughters/sons are married; similarly in single parent households or when a step-parent moves in with the family
- When an older sibling (particularly a daughter) refuses to marry, the younger female siblings may be forced to marry in order to protect the family honour or to fulfil the original contract
- If a child/young person discloses sexual abuse, this could be seen as bringing shame on the child/young person and, by extension, on the family. If the young person who discloses the abuse becomes known to people outside the family, it may damage their chances of future marriage. Therefore, family members may think that marriage will restore honour. They may also believe that marriage will end the abuse
- If a young woman is raped, the family may want her married as soon as possible before this is common knowledge within the community, thus damaging her family's honour and her own and siblings' marriage prospects. If the perpetrator is known to the family and is from the same faith and caste, the family may ask him to marry her
- If someone is lesbian, gay, bisexual or transgender (LGBT), the family may think that marriage will mean that the victim's sexuality sexual orientation or gender identity will not be questioned. They may also believe that marriage will 'cure' the individual of what they perceive to be abnormal feelings, behaviours or attractions
- If someone has a physical or learning disability, the family may think that marriage will provide them with a carer/financial security. Also by 'marrying off' the person, the family ensures that the marriage prospects of siblings are not tarnished by having the victim remain unmarried

Effects on the victim

As with other forms of domestic and child abuse, isolation is one of the biggest issues for victims. There may be no-one they can trust. They may not be able to speak or understand English.

Victims may be married to first cousins which means that they are subject to force from all side of their family. They may be completely isolated or ostracised if they go against the marriage.

Women rarely disclose if they are threatened with forced marriage. So, they often come to the attention of practitioners for behaviour or health issues consistent with distress (for example stress-related and mental health issues; self-harm).

Young women are often taken out of education, restricting their educational and personal development. Their movements and contacts outside the immediate family and community may be prevented or restricted.

They may feel unable to act against the wishes of their parents. Their parents may threaten to disown them if they do, also affecting their relationship with the wider family/community. So, they may suffer emotionally, often leading to depression and self-harm. Research indicates that self-harm and suicide are significantly higher among South Asian women¹⁶ than other groups and contributory factors include lack of self-determination, excessive control, weight of expectations of the role of women and anxiety about their marriages.

Having a learning or physical disability or illness may be an additional risk factor for victims and may make it more difficult for them to report abuse, seek help or leave an abusive situation. Their care needs may make them entirely dependent on their carers.

All these factors can contribute to impaired health, social development, limited career and educational opportunities, financial dependence and lifestyle restrictions.

Consequences of forced marriage

Whether victims remain with, or attempt to flee from the abuse, they face many difficulties.

Women forced to marry frequently end up trapped in a relationship characterised by physical and sexual abuse. They may be raped repeatedly (sometimes until they become pregnant) with health consequences such as sexually transmitted infections and blood-borne viruses. They may be abused by the extended family. Extended family abuse can be as severe and in some case worse than is perpetrated by a spouse or partner and can include rape daily violence and humiliation.

This abuse has a detrimental effect on any dependent children within the household. Children witnessing abuse can be traumatised and their emotional security and capacity to meet the demands of everyday life undermined. Their health, performance at school, general behaviour and demeanour may be affected. There is a strong association with depression, trauma-related symptoms and low self-esteem in adulthood. For more on the effects of domestic abuse on children and young people see www.scottishwomensaid.org.uk

Many young women are withdrawn from education. Interrupted education limits career choices. Even if a woman manages to find work, however basic, her family may prevent her from taking the job or take away her earnings. This leads to economic dependence, which makes the possibility of leaving even more difficult. Some women are forced to work, unpaid, within close family or community businesses where they can be monitored.

¹⁶ See for example, *Self harm in British South Asian Women: psychosocial correlates and strategies for prevention* - Husain M, Waheed W, Husain N: Annals of General Psychiatry 2006

'My father found out that I had a boyfriend and that changed everything in our family. He literally kept me prisoner in the house, wouldn't let me see my friends and then started planning my wedding – to a man I had never met. He said that I had to follow our customs, and there would be no discussion. I didn't have any way out...'

Some women are not allowed to leave the house unescorted, living under virtual 'house arrest'. Their only source of information is the perpetrator(s), so they are also emotionally isolated. Some are taken and left abroad for extended periods, away from any support. These factors limit opportunity and choice and means they go through with marriage as the only option. They may find it very difficult to take action to end the marriage.

Leaving the family can be especially hard for women from black and minority ethnic communities. They may have no experience of life outside the family. They may risk losing their children and friends. Finding other accommodation may be very difficult especially for those who do not have recourse to public funds¹⁷. Living away from home with no or little support can make women more isolated, thus increasing the likelihood of feeling they have no option but to return to the abuse. Women with no recourse to public funds are not entitled to benefits including Housing Benefit and so have no means to support themselves or any children.

The community may view leaving the family, accusing the family of a crime, or simply approaching an agency for help as bringing shame on both its 'honour' and on the honour of the family. This may lead to social ostracism, harassment and even physical or sexual violence by the family and community. Many women are, understandably, unable to face or prepared to undergo this abuse and humiliation.

Those who do leave often live in fear of their families who may go to considerable lengths to find them and bring them back. Families may ask others to help them find the woman, or involve the police by reporting them missing or falsely accusing the woman of a crime (for example theft). Some families have traced women through medical, dental, benefits, school and college records or National Insurance numbers. They may use 'bounty hunters' (people paid to capture fugitives for a monetary reward), private investigators, taxi drivers, shopkeepers and other members of the community. Sometimes, having traced the woman, the family or a third party may murder them (so called 'honour killing') or subject them to further violence or abuse.

Most cases which have been reported to the police have also included a level of collusion and planning, usually by way of a family or community meeting to decide how to deal with the issue/victim. This reinforces the isolation victims experience and the restricted options they face when trying to get help and support.

Women who have not been allowed to work, and/or have no money of their own will have to find a way to support themselves and any children and to set up their own home. This is likely to mean needing to claim welfare benefits, a process which they

¹⁷ See page 98

may find confusing and lengthy. It may also be dangerous as family members may be privy to a woman's security information and be able to find out where she is.

For people with learning disabilities, and the spouses they are forced to marry, there can be additional consequences, for example:

- Abandonment – the spouse without a disability may not want to provide their care and support, and could reject the person with learning disabilities
- The spouse without a disability may not realise they are committing a criminal offence by having a sexual relationship with a person who does not have the capacity to consent to sex. This is not an excuse
- The spouse without a disability may be subject to violence from their in-law's family should they seek to leave the marriage
- The spouse without a disability may seek exploitative access to the finances of the person with learning disabilities
- The spouse with a learning disability will face more difficulties should they wish to leave the marriage

Warning signs and indicators

Those facing forced marriage may be anxious, depressed and emotionally withdrawn with low self-esteem. They may come to the attention of practitioners for various reasons (The same indicators could indicate other forms of abuse which also require an effective multi-agency response).

Other, less common, warning signs include hair cut short or shaved as punishment; young women saying they have been taken to the doctor for virginity testing; and symptoms associated with poisoning (this could be a murder attempt or drugging to gain compliance or suicide attempt).

In certain communities, women are expected to undergo female genital mutilation (FGM) or 'cutting' before marriage. This is usually performed during childhood but there have been reports of young women undergoing FGM just before a forced marriage. FGM is illegal and a criminal offence in Scotland under the Prohibition of Female Genital Mutilation (Scotland) Act 2005¹⁸, as well as in the rest of the UK under the Female Genital Mutilation Act 2003¹⁹. It is also a criminal offence under both Acts to take someone overseas for the purposes of FGM.

¹⁸ Prohibition of Female Genital Mutilation (Scotland) Act 2005: www.legislation.gov.uk/asp/2005/8/contents

¹⁹Female Genital Mutilation Act 2003: www.legislation.gov.uk/ukpga/2003/31/contents

If someone you are in contact with is going overseas but has no return date this could be a warning sign.

When a forced marriage takes place overseas

For many victims, this may be the first time they have travelled overseas and they may not be aware that this is the purpose of their trip (it may be presented as a holiday). If they are held against their will and forced to marry, it may be hard for them to get back to the UK. The difficulties include not being able to phone, write or email; not having their passport; not having any money; not being allowed to leave the house unescorted; and not speaking the local language.

They may be held in remote areas where even getting to the nearest road can be hazardous. They may not get any help from (indeed they may be actively hindered) by the local police, neighbours, family, friends or taxi-drivers.

They may be abused or threatened physically, emotionally and sexually.

Even if the authorities in the UK know where a British national is, it may not be possible to provide suitable assistance to reach the area or to rescue them.

So, always warn victims what might happen if they travel overseas and, if possible, advise them not to travel. If not gather as much information as possible.

If there are child protection or vulnerable adult issues, you have a legal duty to act and steps can be taken to prevent certain travel arrangements taking place altogether.

Remember that an FMPO can be used to protect all children and adults at risk.

Remember the one chance rule (see page 9) and refer also to actions to take (page 63), information gathering (page 68) and legal remedies (section 3).

E was born in the UK but her parents were from Somalia. She was at university and things were not going well at home because her parents thought she was becoming too 'westernised' and disapproved of her smoking and drinking and having a boyfriend. Her mother tricked her, saying that she wanted to take E on holiday to Somalia to show her where she and E's father had grown up. When they arrived, she was chained to a wall of the house in which they were staying until she was forced to marry a much older man. E tried to run away. Her mother called the police and the police arrested E and put her in a prison where there were other women who had resisted marriage. After being let out of prison, E pretended to capitulate. She was allowed to go into the local town where she managed to email a friend in the UK. The friend contacted the Forced Marriage Unit. The FMU managed to arrange to have her smuggled out of Somalia to Ethiopia and onto a plane home where she went into refuge. She was very frightened because she had 'brought shame' on her family by running away and feared that if her family found her, they would kill her.

Remember:

In some instances, victims themselves may have no indication that they are being forced into marriage e.g. if they think they are 'going on a family holiday' and on arrival in another country are forced into marriage. For people with disabilities, warning signs may not be immediately obvious, and so all practitioners need to 'think outside the box'.

There are statutory powers to protect vulnerable adults who cannot consent or who are at risk of being forced into marriage.

Warning signs²⁰



EDUCATION

- Sudden or unexplained absence and/or persistent absence
- Absence after school holidays
- Request for extended leave of absence and failure to return from visits to country of origin
- Fear about or lack of interest in forthcoming school holidays
- Surveillance by siblings or cousins at school
- Decline in behaviour, engagement, performance or punctuality

²⁰ The list of warning signs is not exhaustive. The lists are inter-linked – do not simply focus on the list which seems most relevant to your area of work.

- Being withdrawn from school by those with parental responsibility
- Removal from a day centre, college, club or regular activity of a person with a physical or learning disability
- Not allowed to attend extracurricular activities
- Sudden announcement of engagement to a stranger
- Prevented/discouraged from going on to further/higher education
- Prevented/discouraged from learning English
- Lacks friends or withdraws from friendship group

EMPLOYMENT

- Poor performance
- Poor attendance
- Not allowed to work
- Reluctance or inability to attend business trips or social functions
- Subject to financial control e.g. confiscation of wages/income
- Pattern of going to and leaving work accompanied
- Unable to be flexible in their working arrangements
- Always having to be available by mobile phone

HEALTH

- Always accompanied by partner or family to doctor or clinics
- Someone else insisting on speaking on their behalf or discouraged/not allowed to speak
- Prevents examination for injuries or person accompanying them prevents examination
- Self-harm
- Attempted suicide
- Eating disorders
- Depression
- Isolation
- Substance misuse
- Early/unwanted pregnancy
- Very late presentation with pregnancy or in labour and no ante-natal care
- Sexually transmitted infection
- Female genital mutilation
- Neglect of health and late presentation with medical issues
- Failure to attend appointments

FAMILY HISTORY

- Siblings forced to marry
- Early marriage of siblings
- Self-harm or suicide of siblings
- Death of a parent
- Family disputes (within and between families)
- Running away from home

- Unreasonable restrictions e.g. kept at home by parents ('house arrest') and financial restrictions

POLICE

- Victim or other siblings within the family reported missing
- Reports of domestic abuse, harassment or disturbances at the family home
- Minimising, denying or wanting to withdraw complaints
- Victim calls the police but refuses to give a statement
- Husband's family accompanying the woman to all police visits
- Female genital mutilation
- The victim reported for offences e.g. shoplifting or substance misuse
- Threats to kill and attempts to kill or harm
- Reports of other offences such as rape or kidnap
- Acid attacks

5. Responding to forced marriage: a good practice approach

All practitioners need to remember the 'one chance' rule. That is, you may only have one chance to speak to a potential victim and, therefore, only one chance to save a life. This means that all practitioners need to be aware of their responsibilities to possible victims of forced marriage. If the victim leaves without you offering support, that one chance might be wasted.

Victims of forced marriage are often entrapped by the abusive behaviour and actions of perpetrators – literally, and because of fear and threats. This is all the more intense because of the weight of cultural expectations, the woman's own cultural beliefs, fear of bringing dishonour to the family, along with social ostracism, harassment and actual violence. This makes it very difficult for victims to come forward.

For this reason, it is important that you:

- Start from the position of accepting what women say to you
- Do everything you can to keep women safe
- Get advice if you are not sure what to do
- Ensure an independent translator is available if necessary
- Be aware a woman might not be allowed or willing to speak to a male worker alone

It is a huge step for women to take action or follow through as there is so much at stake. Your role is to explain options clearly, help her plan for safety and reassure her that she can come back to you at any time.

Many victims of forced marriage do not fit within adult support and protection or child protection criteria. A victim may be at risk as a result of forced marriage and domestic abuse but not meet the particular criteria defined by legislation. It is important to make sure that any victim, whatever their age or circumstances, who is in or at risk of a forced marriage, is supported through effective multi-agency working, and that you take action to ensure her safety.

Prevention

With better awareness, women are more likely to seek help at an earlier stage. The sooner agencies take effective action, the more likely it is that forced marriages can be prevented.

- Be aware of the issues surrounding forced marriage, the dangers women face and the help available

- Encourage women to come forward by clearly displaying relevant information (but carefully – e.g. put in women’s toilets) and providing an environment which is conducive to disclosure
- Be ready to inform women about their options - both civil and criminal, the help available and how to get it. Advising a woman that she can apply for a Forced Marriage Protection Order may help reduce any anxiety about criminal sanction

This may be in tandem with criminal investigation/proceedings (see page 8). Although a victim may not wish criminal proceedings to go ahead, the COPFS’ Prosecution Code sets out the decision-making process followed by COPFS when it receives a report of a criminal offence. It sets out both the evidential considerations and the public interest considerations that are relevant to decision making.

The consent of the victim is not a prerequisite for criminal proceedings. The views of the victim would be one factor for prosecutors to consider when deciding whether to initiate or continue with criminal proceedings in any particular case. However, prosecutors have a duty to make decisions based on the wider public interest.

Your approach

- Take a victim-centred approach (see below)
- Take any disclosure of forced marriage seriously. For many victims, seeking help from an agency is a last resort
- Respect women’s concerns for safety and the risks they face
- Provide accurate information about rights and choices
- Listen to the woman and respect her wishes whenever possible
- If a woman wants to take a course of action that may put her or someone else at risk of immediate harm, explain the risks to her and follow your agency’s child protection and risk management/assessment procedures
- Do not dismiss forced marriage as a ‘family matter’ or a cultural or religious practice
- Make sure you keep a (secure) record of contacts made and everything done or said by you, the victim and other agencies contacted

Victim-centred response

- Respect a victim’s wishes, choices and rights

- Offer the choice of a male or female worker, if possible (but in an emergency speed of action will override this)
- Provide an independent interpreter if necessary. This should be a professional (never a family member, children or an apparent 'friend' who may be a family member masquerading as support)

Interpreting²¹

- There are risks in using interpreters, so you should be cautious and do the best you can to minimise these risks
 - If interpreters or signers are required, this should be someone independent and professional and not a friend or family member
 - Check the interpreter's details (name and area where they are from) with the victim
 - Make sure that interpreters sign a confidentiality agreement and understand why
 - Ideally, interpreters should be trained in domestic abuse awareness
 - Ensure that the interpreter understands that their role is to translate language verbatim, not 'interpret' the message, and absolutely not to advise, censor or correct the person or summarise their response
 - Consider using a telephone interpreting service if safe to do so (for example Language Line at www.language.co.uk). This could be useful in an emergency and for making arrangements for future meetings
- Provide a communication specialist if necessary to support a person who is deaf, visually impaired or has learning disabilities. The provisos for interpreters, as above, apply

²¹ Glasgow Violence Against Women Partnership 'Good practice guidance for women who have experienced gender based violence' contains useful information:
<http://www.womenssupportproject.co.uk/userfiles/file/GVAWP%20Good%20Practice%20Guide%202011%20Final%20Nov.pdf>

- Make it clear to a victim if you are planning to intervene and what you are planning to do, particularly if this involves applying for a Forced Marriage Protection Order (see page 76). This is particularly important if the victim has indicated that she does not want you to take any action but you have a professional responsibility e.g. because she is an adult or child at risk
- Obtain the victim's consent to share information (within the limits of e.g. child protection policy). Always tell the victim if you are planning to share information; who you will share it with; why; and who else might be party to it. You should also ask/tell her if any other organisations are aware of her circumstances even if you are not planning to share information with them
- If you are making a referral to another service (for example Women's Aid or a solicitor) be prepared to accompany the woman to the appointment

Improving safety

You can improve women's safety by:

- Being aware of the possibility of abuse
- Recognising signs and symptoms
- Broaching the subject sensitively
- Listening and making time
- Giving accurate information
- Recognising risks correctly
- Working closely with her to identify risks and work out a safety plan
- Working in partnership with other agencies (always bearing in mind the safety of the victim and the need for absolute discretion)

Supporting disclosure

To support disclosure and protect a woman at risk of, or in a forced marriage:

- Remember that she may not want to speak to a man and this could result in her appearing reluctant to speak, so provide a choice of female or male worker
- Provide a private and confidential environment where she can speak without fear of being overheard

- See her on her own, even if she is accompanied. The only exception should be a professional interpreter
- Treat her with respect and dignity. Be aware of the grave risks she may face in talking about abuse
- Recognise that she may be frightened of contact with statutory agencies. She may have been told that she will be deported and/or that her children will be taken from her
- If she insists on being accompanied e.g. by a teacher or advocate, make sure this person is not linked to her family/community and ensure that they fully understand the need for confidentiality and not telling family members; this may also involve them agreeing to create a credible and consistent cover story if quizzed by the family
- Under no circumstances should a family member, friend or community member or leader be used to interpret

Remember

- Offer a private space where you will not be overheard
- A woman may not want to be seen by a practitioner from her own community
- Have an excuse or plan ready in case a woman is seen by someone involved in perpetrating the forced marriage or who could (unwittingly) give information back to them

The danger of involving the family and community

Involving families in cases of forced marriage is dangerous. It may increase the risk of serious harm to the woman. The family may not only punish her for seeking help but also deny that they are forcing her to marry; expedite any travel arrangements; and bring forward the marriage

- Do not visit the family to ask them whether they are intending to force the victim into marriage or write a letter to the family requesting a meeting
- Do not use relatives, friends or community leaders as interpreters, regardless of reassurances. Sensitive information may be passed on to others placing the woman or those who are actually willing to support her in danger. Such an interpreter may deliberately mislead practitioners and/or encourage the woman to submit to the family's wishes
- Do not contact an embassy or high commission without a woman's consent. She may not wish anyone in her country of origin to know her whereabouts

Interviewing women

Women are likely to be anxious and distressed. Interviews should take place in a private and secure place free from interruptions, in accordance with your organisation's practices and procedures. Take all steps to ensure that she is safe when in your premises. If it's a public building she could be seen by her family.

Assessing and managing risk

You should assess risks to the victim using your current processes but you also need to be aware of the particular risks associated with domestic abuse and forced marriage. The Domestic Abuse, Stalking and Harassment and Honour Based Violence (DASH, 2009) tool may be helpful with this see:

www.dashriskchecklist.co.uk/

This risk assessment tool is endorsed by ACPO and is being used across England, Wales and Northern Ireland and some areas of Scotland.

(Police Scotland uses Domestic Abuse Questions – DAQ)

See www.caada.org.uk for a risk assessment tool which gathers information on domestic abuse, honour-based violence and stalking.

There is also information about risk assessment within the Caledonian System at www.scotland.gov.uk/Topics/People/Equality/violence-women/CaledonianSystem

NB – Practitioners should not use these tools without training.

Multi-Agency Risk Assessment Conferences (MARAC) operate across Scotland. These screen high risk victims of domestic abuse and provide a multi-agency response to reduce escalation and repeat victimisation. The MARAC approach may be a useful framework for providing a multi-agency response (for example for 16-17 year olds who may fall between different procedures). MARACs offer a proactive multi-agency environment for sharing information in a structured way and bringing in agencies with specialist knowledge.

Safety planning

It is important to agree a safety plan with victims. See page 60 for more information on safety planning.

Safety for future contact

- If the woman does not want to meet you in your premises, arrange to meet her somewhere she feels comfortable but is safe
- She will know where and when is best to meet you. But remember that she or you may be followed. If she can pretend to be going to meet someone else, who then organises for you to be there, that could be an option

- Never speak to her in the presence of ‘friends’
- Find out if you can contact her safely at work, school or through a trusted friend, sibling or organisation
- If you are phoning her mobile phone, check who pays the bill, as the perpetrator might see the call record
- Agree an unusual code word to ensure that you are speaking to the right person. (This could be an unusual answer to a previously agreed innocuous question)
- If you are using texts, email or post, make sure that messages cannot be intercepted but work on the presumption that they may be
- A third party may be your only link to her especially if she has been taken overseas

Explaining options

A woman who is at risk of forced marriage has limited choices. There are various permutations depending on the circumstances, below are some examples:

- To remain with her family and try to resolve the situation
- To comply with her family’s wishes
- To leave her family, start a new life and possibly have to remain in hiding / face ostracism and isolation / take legal action against her family
- To seek protection, using the 2011 Forced Marriage Act or other civil and criminal protection orders and interventions

A woman already trapped in a forced marriage has limited choices:

- To stay in the marriage
- To seek to prosecute the perpetrators under the 2014 Act
- To flee the marriage, with or without her children, start a new life and possibly have to remain in hiding / face ostracism and isolation / take legal action against her family
- To leave the family and publicly refuse to sponsor her spouse’s visa application for entry into the UK, or have the spouse removed from the UK if they are already here

Remember:

- If a woman is forced into a marriage overseas, and the marriage is valid in that country, it is likely that it will also be valid in the UK
- A woman can apply to the court to have her marriage annulled or for divorce
- Under Scots law, a religious divorce on its own does not end the marriage in the eyes of the law (although some women may also want a religious divorce because it is a vital part of ending the marriage)
- Having children or younger siblings can limit a woman's options/choices
- Women who choose to stay within the marriage or return after leaving may be at serious risk of abuse
- Leaving can increase risk and make women's situation's extremely dangerous. Their family or spouse may try to search for them through housing, benefit, employment, education and health records. These records can be protected (see page 58)
- Families may be very persistent and search for women through religious establishments, BME shops/business and communities
- Many women will not consider taking action against their family
- Women who are in Scotland on student/dependant/highly skilled immigrant visas who have no recourse to public funds are not entitled to housing and other welfare benefits (see page 98). Only individuals who have entered the UK on a spousal visa or as a partner of a UK or settled person can apply to the Destitute Domestic Violence Concession fund (DDVC).

If the woman is from overseas

If the woman is from overseas, fleeing the marriage and applying to remain in the UK is complicated and requires professional immigration advice.

Note that the Immigration and Asylum Act 1999²² makes it unlawful for anyone to provide unregulated immigration advice or immigration services unless they are registered as an immigration adviser and/or are exempt from the requirement to register.

Returning to her country of origin is not likely to be an option as she may be ostracised, subjected to violence or even killed. You should explain the risks, even just to exclude this option.

²²The Immigration and Asylum Act 1999: www.legislation.gov.uk/ukpga/1999/33/contents

The woman may be extremely frightened by contact with any statutory agency as she may have been told that the authorities will deport her and/or take her children from her. You should be sensitive to these fears, even if she has indefinite leave to remain or a right of abode, as she may not be aware of her true immigration position. These circumstances make her particularly vulnerable.

Regardless of whether a woman is in breach of immigration rules (for example if she is an overstayer), she is likely to be the victim of a crime and may be traumatised as a result. She may also have a route to regularise her stay in the UK and she should be referred for legal advice as soon as possible.

If you are investigating a woman's immigration status, this should not affect police enquiries into an offence that may have been committed against her or her children.

Confidentiality and information sharing

Women facing or in a forced marriage are understandably very concerned about privacy and confidentiality. They know that if anyone finds out that they have gone for help they will be at serious risk. But they are already likely to be at serious risk because of domestic abuse, 'honour-based' violence, sexual violence and imprisonment within the family.

You must be clear to women about when confidentiality can be promised and when information may need to be shared. You should clearly explain to women what your agency means by 'confidentiality' and the limits to this, e.g. when a child is at serious risk of significant harm.

You may have to share information with others in your own and in other agencies in order to protect women. However, you should think very carefully about the risks before you do so.

Information should not be shared outside the requirement of child or adult protection information sharing protocols without the consent of the individual.

Most women will consent if you explain the reasons and what will happen, and give assurances (that the information will not be passed to their family).

Whether or not she consents, you must tell her if you intend to disclose confidential information, what information is being shared, with whom it is being shared, who else will be party to it and why it is being shared. Women should also be told which people/organisations are aware of their circumstances, even though specific information may not necessarily be shared with them.

Any decision to disclose/share without consent must be fully recorded.

Effective inter-agency working and information sharing

Information should only be shared if it is to protect the victim. It should not be shared for the sake of sharing information and must always be justified, necessary and appropriate. Given the high level of risks to victims and the persistence of perpetrators, anyone who processes personal information must comply with the eight principles of the Data Protection Act 1988²³ to make sure that personal information is:

- Fairly and lawfully processed
- Processed for limited purposes
- Adequate, relevant and not excessive
- Accurate and up to date
- Not kept for longer than is necessary
- Processed in line with the individual's rights
- Secure
- Not transferred to other countries without adequate protection

Sharing personal information

The UK Government Information Commissioner's Office has published a statutory Code of Practice²⁴ which explains how the Data Protection Act applies to sharing personal data. It provides practical advice to all organisations, whether public, private or third sector, which share personal data and covers systematic data sharing arrangements as well as ad hoc or one-off requests to share personal data.

Adopting the good practice recommendations in the code will allow you to collect and share personal data in a way which complies with the law, is fair, transparent and in line with the rights and expectations of the people whose data is being shared.

The procedures include arrangements for appropriately sharing relevant information with and making referrals to the police, social work, health and the Forced Marriage Unit. For forced marriage, it states:

- 'Staff should understand the importance of sharing appropriate and relevant information with other agencies at the earliest opportunity and the difference between breaking confidence (Part 4 of the Children and Young People(Scotland)Act 2014 ensures that all children and young people have a Named Person provided by the local authority with a duty to promote, support and safeguard the child's wellbeing) (involving the family, community

²³Data Protection Act 1988: www.legislation.gov.uk/ukpga/1998/29/contents

²⁴Information Commissioner's Office Code of Practice:
www.ico.gov.uk/for_organisations/data_protection/topic_guides/data_sharing.aspx

members and so on without the individual's consent) and sharing information with other professionals to protect the individual from significant harm.'

- 'Staff covered by this guidance must also be aware that the person at risk's confidentiality can be breached through use of interpreters, so they must do their best to use interpreters from outside the local community, in addition to not using community leaders, and staff should check with victims if they are comfortable with the interpreter who is present. If no appropriate interpreter is present staff must consider using language line or other phone interpreting services.'
- 'Staff should also be aware that they, other colleagues within the organisation or others within the victim's support network may be approached and/or pressurised by a member of the victim's family, a family friend or a member of the community to give out information.'
- 'The individual must always be advised of the individual professional and organisations which have been informed of their circumstances, regardless of whether that professional or organisation will be directly involved in supporting them and/or taking action to secure their safety or apply for a Forced Marriage Protection Order. This will include advising the individual what personal or other information that professional or organisation has been given, the obligations on them to maintain the individual's confidentiality and the consequences of breach on both the individual and professional.'

Consider:

- Your duties and obligations under the Data Protection Act 1998²⁵ and your organisation's existing information-sharing protocols and procedures for child protection; adult support and protection; domestic abuse
- Consulting a domestic abuse specialist/child protection officer/adult support and protection officer/MARAC co-ordinator about how to share information safely with practitioners from other agencies
- Consulting with other agencies (but be aware if you speak to the police that they are duty bound to act on the information you provide)
- Referring the woman, with consent, to agencies experienced in working with survivors of domestic abuse and forced marriage (see page 144)
- Advising women about remote reporting to the police

Remote reporting

²⁵Data Protection Act 1998: www.legislation.gov.uk/ukpga/1998/29/contents

Remote reporting is a way of reporting a crime or passing on information without talking to the police directly. There are various organisations, including Shakti and Amina (see page 144), where victims, witnesses, carers or others can speak privately to a member of staff, who will pass information onto the police. Individuals can ask for their information to be investigated; leave details, but ask for information not to be investigated; leave no details, and ask for information not to be investigated (this helps police gather intelligence). Check out the arrangements in your area.

Children and young people

A child or young person may ask you not to give information to their parents/guardians or others with some authority²⁶ over them. Child protection guidance states that discussion with family and the family's agreement to refer to local authority children and families social work should only be done if such discussion and agreement-seeking will not place a child at increased risk of significant harm. Consequently, you should respect the young person's request for confidentiality, and should not approach or involve families if forced marriage is suspected until steps are taken to ensure the safety of the child. Information should be passed to the Named Person if it is likely to be relevant to the exercise of the Named Person function for the child or young person under the Children and Young People (Scotland) Act 2014

Remember:

You may be asked to make exceptional disclosures, for example to police colleagues or other agencies to assist a criminal investigation. The Data Protection Act 1998 (section 29) provides an exemption from certain requirements of that Act in particular circumstances, including for the purposes of preventing or detecting crime. This can enable disclosures to be made without the consent of the subject. This is important as, in some cases, it may not be possible to obtain someone's consent, for example if they are overseas. You should seek advice from your organisation's legal department.

In cases of forced marriage, it is important that agencies work together to help women; inevitably, this involves sharing information safely and appropriately.

If you are not able to obtain a woman's consent, for example, when she is overseas, you should share the information if you are concerned that a crime may be committed.

A woman's family may ask a third party such as a councillor, MSP, MP or influential community member to approach you for information. The family may give the third party a very plausible reason for needing to know the woman's whereabouts, for

²⁶ Part one of the National Child Protection Guidance 2014 provides the most up-to-date guidance on information-sharing: www.scotland.gov.uk/Publications/2014/05/3052

example, illness of a close relative. The third party may genuinely believe they are being helpful. Such requests are often made by telephone. You should never divulge information in such circumstances. This includes divulging whether the woman is known by your service.

See page 58 for information about keeping records and security of information.

DO NOT:

- Overlook possible breaches of confidentiality such as leaks from within your organisation, from records, interpreters and communications with other organisations
- Share information with the woman's family, community or others without her express consent
- Give any details to the media without the woman's express consent – but make sure that you fully assess the risk of giving details to the media

Medical examinations

If you need to arrange a medical examination for a woman (for example, for treatment for injuries or to document evidence), be cautious about the arrangements for this (for example, a local clinic may not be safe). Health professionals should respond to individual requests to organise a safe place or time for such an examination, if at all possible.

If she has injuries or signs of abuse, encourage her to have them documented. Such information may be useful if there is a future court case (especially if she is a spouse from overseas).

Any examination of a child or young person should take place in accordance with the National Guidance for Child Protection in Scotland (2014)²⁷.

Making enquiries

You may need to make enquiries about a woman, for example if she is imprisoned in her home or has gone missing (see page 57 for more on missing persons). Gathering such information, whilst maintaining confidentiality, is difficult. Generally, enquiries should be made by police officers with assistance from social workers. However, sometimes, education and health practitioners may want to make discreet enquiries before involving the police. You should always consider the potential for unintended consequences triggered by making enquiries and asking questions.

If you need to share such information with other agencies, only do so if they know how to handle such information safely.

²⁷ www.scotland.gov.uk/Publications/2014/05/3052

Simply visiting the family home without knowing the circumstances may put a woman at risk of harm.

If a woman is being held overseas, contacting overseas organisations directly can increase risks:

- The overseas police and other organisations may collude with or have close connections with the family
- They may jeopardise the woman's safety through their attempts to assist
- The family may retaliate against the woman; bring the marriage forward; remove her to an unknown destination

In such circumstances you should liaise closely with the Forced Marriage Unit (see page 17).

The danger of family counselling, mediation, arbitration and reconciliation

Because of the nature of forced marriage and honour-based violence, some of your agency's standard procedures, may inadvertently place those facing forced marriage at greater risk of harm. This includes attempting to resolve cases through family counselling, mediation, arbitration and reconciliation.

You should not actively initiate, encourage or facilitate such approaches because:

- Some women have been murdered by their families during mediation
- Women may be placed at risk of further emotional and physical abuse
- Perpetrators may use subtle and exclusive methods of communication, including non-verbal ones, which are not discernible to you or you do not understand their particular implications for the woman
- Women's safety is compromised in any process which means they have to negotiate their safety or discuss their feelings in the presence of their abuser and the outcome will not be to their benefit. They may feel pressurised to deny or minimise abuse or their concerns. More importantly, out of fear for the consequences if they do not, women frequently reach 'agreements' which are not in their best interests

Family group conferences are not appropriate in cases of forced marriage because these can place a child or young person at greater risk of harm (see above).

Meetings with the family present

If a woman insists on meeting with her family, this should take place in a safe location, supervised by a trained/specialist professional, with the possible presence of a police officer. An authorised accredited interpreter should be present, as families sometimes threaten the victim verbally and practitioners need to understand what is being said.

If a woman has left the family home, unsupervised contact with her family may be extremely dangerous and she should be advised against this. Families may subject her to extreme physical or mental abuse, abduct her or take her overseas, regardless of any protective measures in place.

Missing persons and those who run away

A missing person is anyone whose whereabouts are unknown, whatever the circumstances of the disappearance. An individual is considered a missing person until they are located or their wellbeing otherwise established. Anyone can be reported to the police as a missing person. You might make such a report as a practitioner if you are concerned about someone. Families who are trying to track down a victim might also contact the police.

Every report of a missing person must be met with a risk assessment and responded to in a coordinated manner by all agencies with a view to meeting the needs of the missing person and their family/carers, those close to the missing person, as well as the wider community (but within the context of ensuring the safety of a potential victim). The investigation into a missing person begins at the point of first notification to the police. This may be the first report of a serious crime or indicator of significant harm to a person. It is essential that all reasonable steps are taken to assess the level of risk and to determine the appropriate course of action and speed of response.

In the case of a 'missing person' or young person who runs away, your first concern should be for their welfare and safety.

Informing the family about their location or returning the victim to the family may place them at risk of significant harm. Some families have killed victims in these circumstances. Some families go to considerable lengths to find the victim (see page 64). Do not give out any information unless you are absolutely sure that the request is genuine. Always check such requests with an experienced colleague/manager.

For further information about young people who run away refer to the National Guidance for Child Protection in Scotland (2014)²⁸.

Remember

- Those fleeing a forced marriage which has not yet taken place may be reported as missing by their families. The forced marriage aspect may not be obvious
- If the family locates the victim, try to speak to the victim on their own to establish why they left home, the circumstances of their return and what they want to do

²⁸ www.scotland.gov.uk/Publications/2014/05/3052

- If police locate a young person under 16, social work or the police should interview them before any consideration is given to returning them home, to establish whether it is in their best interests and safe for them to return (see the National Guidance for Child Protection in Scotland 2014 at www.scotland.gov.uk/Publications/2014/05/3052)
- A local authority can provide accommodation under homelessness law for young people aged 16 and over who are at risk of abuse. For children under 18, access to accommodation will depend on the specific circumstances of each case and applicable legislation
- A young person under 16 who is at risk in the family home may be assessed as needing emergency accommodation under the Children (Scotland) Act 1995²⁹ (see sections 22 and 38)
- Those fleeing a forced marriage, or the threat of one, may need to be accommodated outside the immediate area by a different local authority

Do not:

- Disclose information without the express consent of the woman unless the disclosure is to other appropriate agencies with the correct procedures and data protection policies, and disclosure is necessary to protect her or dependants from immediate harm
- Tell anyone where the woman is; do not even refer to the general area

Keeping records

It is important to keep accurate records. Apart from being necessary as part of your organisation's internal procedures or legal requirements, these are useful and may be used as evidence of domestic abuse in civil and criminal court proceedings, immigration cases or applications for Forced Marriage Protection Orders.

You should record in detail what the woman said and what you discussed. Even if she does not disclose forced marriage, a record of your assessment which led to your suspicion may be useful in the future.

Record referrals to others within your organisation or other organisations; who is involved; agreed actions; and update arrangements.

²⁹ www.legislation.gov.uk/ukpga/1995/36/contents

All such records should be kept secure to prevent unauthorised access.

They should only be available to those directly dealing with the case.

There may be issues about access to records, particularly access to a child's health or education record by a legitimate parent/recognised extended family carer. It is possible to withhold any parts of a record which deal with sensitive personal data, or if disclosing the information would be likely to cause significant distress or harm to, for example, the pupil or patient or to any other person.

As a general principle, therefore, references to suspicions of forced marriage should be kept separate and very clearly highlighted in any records so they can be removed to eliminate any possibility of this being shared.

Such material could be double sealed within a case file with further restricted access.

Records should:

- Be accurate, detailed, clear and dated
- Use the person's own words in quotation marks
- Document any injuries – include photographs, body maps or pictures
- Be available only to those directly involved in the case

Remember:

Some people who have fled a forced marriage have been traced through their medical or benefit records. When someone moves to a different area, make sure that there are systems to prevent their medical records being traced to another GP practice or benefit office.

Keeping National Insurance numbers confidential

- The Department for Work and Pensions (DWP) does not allocate new National Insurance numbers to claimants at risk of domestic abuse or forced marriage
- But it does have a policy which means it can mark certain records as restricted; practitioners can help women ensure that this is done
- Women can request that their National Insurance records are marked as a 'Special Customer Record'
- Once a case is marked as a 'Special Customer Record' then only a trusted/nominated member of DWP staff is allowed to view that record. This can be done at local Jobcentre Plus offices

6. Safety planning

Safety planning is important for all women threatened with or in a forced marriage. It can help to reduce harm whether they stay, leave in a planned way or escape in an emergency.

Research shows that leaving home is the most dangerous time for women experiencing domestic abuse, so too for those fleeing a forced marriage.

Consider referring women, with consent, to Women's Aid or other domestic abuse specialist for help with safety planning.

When discussing safety planning, remember that a woman will know what is likely to work best in her circumstances. If you involve her, the plan is likely to be more intuitive and, therefore, more effective.

Things to consider when safety planning:

General

- The risk to the woman and any dependants
- The risk to anybody (friends or family) who helps her
- Whether the woman wants to involve the police
- Money - can she open a bank or savings account in her name (but think about where any paperwork would be kept or sent); can she leave spare cash with a trusted friend?
- Papers – where can she leave copies (or serial numbers) of important documents such as her own and her children's passports, birth certificates, information on her own and/or her children's medication, National Insurance number (for example with Women's Aid, police, or a trusted friend)
- Clothes, prescription medicines - as above
- Helpline numbers – tell her about helplines (discuss with her how she might disguise the numbers or help her memorise them)
- Telephone card or mobile in credit so she can phone for assistance (remind her she can dial 999 if she or any children are in immediate danger)
- Safe emergency accommodation – where can she go if necessary?
Remember that standard local authority accommodation might feel frightening

without additional immediate support for language or cultural differences and so you should try to address these needs too

If she is staying with the perpetrator(s)

Discuss the following:

- Where in the house she might go if she sees/senses trouble brewing. For example, avoiding rooms with no exits or rooms with potential weapons (kitchen). If she is able to barricade herself into a room, would she have a phone to ring for help?
- Where the nearest phone is
- Who can offer immediate help. Can she memorise numbers? Is there is a trusted friend who could keep phone numbers for her?
- Tell her about the 24-hour National Domestic Abuse Helpline number: 0800 027 1234. Stress that she should phone 999 if she or the children are in imminent danger. She can phone 999 even if her mobile is out of credit
- If the woman has language barrier, rehearse simple sentence or words that will alert the person on the receiving end to get help to the woman, for example: 'help', 'in danger' or (maybe) her address
- Think about transport (nearest bus stop, which bus number, train) and having enough money put aside for fares, a taxi or petrol
- Leaving some essential items with a trusted friend, if she can, such as a change of clothes, keys and emergency money
- Leaving her passport or copy of this and other important documents with a trusted friend could also be useful – or even just the serial numbers
- If she attends a GP or A&E for treatment as a result of abuse, encourage her to tell them what happened if it is safe to do so, and to make sure this is recorded
- Establishing a 'code word' that she can use with friends or other supportive people that would let them know to call for help, and encouraging her to have thought about what she would like them to do in this event

Strategies for women who are planning to leave

Discuss the following:

- Leaving when the perpetrator/s is/are not around

- Keeping some money in a safe place for emergency transport
- Keeping essential documents in a place where they can be retrieved in a hurry (these might include address book, passport, birth certificate, national insurance number) – or even just the serial numbers
- Keeping some clothes ready to take in a hurry
- Remembering important medicines
- Leaving with all children she intends to go with her. If she leaves anyone behind it can be harder, or impossible, to get them at a later date
- How she can safely remove her children from the home/school or collect them
- Getting out of any taxi before her final destination (in case the driver passes on information)
- Contacting Women’s Aid for information and support especially about safe refuge before she leaves
- How to keep plans secret – this is one of the most dangerous times for women with the likelihood of perpetrators severely assaulting/murdering her and any children
- Avoiding social media activity so that she can’t be tracked

Personal possessions

Whilst it is good to have the following items, they are not as important as someone’s safety:

- Proof of identity (something with a photograph and signature e.g. passport, ID card, photo-card driving licence or National Insurance number/card)
- Benefit books, money, cheque books, bank and credit cards
- Medication and medical card
- Address book, photographs, jewellery and clothing
- Marriage/divorce papers
- Documents relating to immigration status i.e. residence permit, refugee status document

Returning home for personal possessions

If a woman wants to return to the family home to retrieve her possessions, practitioners should:

- Help her plan for this in order to make sure that she is safe and protected. This should be done in the context of risk management and safety planning.

She should not go unless a risk assessment has been carried out and there is a safety plan; her children should not accompany her if she goes

- Do a risk assessment before any visit to the family home
- Advise her that returning may compromise her safety
- Arrange for someone (for example the police) to accompany her if she insists on returning to the family home to collect possessions but, as above, this should be done within a structured safety plan
- Ensure that an accredited interpreter is also present, in case the family makes threats

Ongoing safety

Practitioners should:

- Take precautions to ensure that the woman's identity, benefits, DWP and other records are kept confidential
- Encourage the woman to change her bank account details and mobile phone so she cannot be traced. Some women also change their name. The law in Scotland allows anyone who wishes to change their forename or surname to do so without having to go through any formal process or registration of the new name. The woman simply starts using her chosen new forename and/or surname. The name does not have to be connected in any way to either a person's original name or those of family members.
- Note that registering a change of name with the local Registrar of Births, Deaths and Marriages will leave a record of the new name through which the woman could then be traced. In these circumstances, if the woman requires a formal confirmation of her name change, it would be safer to have a local solicitor Notary Public sign a declaration for her. More information about getting a new name onto documents is available from the local registrar for births, marriages and deaths or the National Records of Scotland (www.gro-scotland.gov.uk/regscot/change-of-name.html)
- Encourage women to change passwords, for example for email accounts; bank accounts; Facebook and so on
- Arrange for safety measures such as an alarm and mobile phone
- Note that women may be traced by through smart phones (people can see where they are when they connect to the internet)
- Remind women that they may be traced through social networking e.g. Facebook or using a webcam

- Refer the woman, with consent, to a support agency such as Women's Aid
- Ask her if she wants anyone to be told that they are safe and well. If so, who? What information does she want given out? This may be best by telephone (and perhaps through an interpreter), and not written format (to minimise traceability). But be cautious when giving information to other parties as sometimes a woman herself has no comprehension of the risk from others

Many women who remain in contact with their families once they have left home continue to be subjected to emotional pressure. This may include misinformation about illness or death of parents, relatives or siblings. Make the woman aware of this and take steps to check the validity of information if she wishes.

Sometimes families use organised networks to track the woman if she leaves. These include family and community members, bounty hunters, taxi drivers and anyone who can get hold of records such as staff from benefits offices, GP surgeries and housing departments. Staff may unwittingly give confidential information to those searching for the victim, so ensure that a woman's and/or her children's files are marked as restricted access/confidential or whatever is the appropriate procedure in such situations.

8. Checklist: actions to take in all cases

Forced marriage involves complex and sensitive issues which should be handled by a child protection, adult support and protection, or domestic abuse specialist with expertise in forced marriage.

The statutory guidance³⁰ on forced marriage states that all organisations should have:

- 'A lead person responsible for the issue of forced marriage. This is likely to be the person with overall responsibility for protecting children, adults at risk or victims of domestic abuse and other forms of gender-based violence'
- Policies and procedures to protect those potentially at risk of forced marriage. This includes for human resources and staff and for service delivery/provision. The policies and procedures should be in line with existing statutory and non-statutory guidance on protecting children, adults at risk and victims of domestic abuse and other forms of gender-based violence

Although frontline staff should contact the lead worker as soon as possible, you may need to gather some information from the victims to establish the facts and assist the referral.

Your approach should be consistent with your own agency's policies and practices whilst taking into account the particular circumstances of forced marriage.

One chance immediate actions

- See the woman immediately in a secure and private place where you will not be overheard (see page 47) - she may not wish to speak to a male member of staff initially and that this could result in her appearing reluctant to speak about the matter
- See her on her own – even if she is accompanied by others
- Reassure her about confidentiality (consistent with your organisation's confidentiality policy) and make it clear that you will not divulge information to her family/friends/community
- Believe what she says
- Explain all the options to her (see page 49) and possible outcomes
- Recognise and respect her wishes
- Perform an appropriate and thorough risk assessment (see page 48)
- Contact, as soon as possible, the lead worker responsible for forced marriage
- For children under 18 refer to social work services who will implement the correct protection procedures dependant on the specific circumstances

³⁰ <http://www.scotland.gov.uk/Topics/People/Equality/violence-women/forcedmarriage/FMGuidance>

- If she is an adult at risk discuss with your adult support and protection lead and refer to inter-agency guidance
- Agree a way to contact her safely (e.g. agree a code word) (see page 49)
- Obtain full details to pass on to the lead worker securely and in accordance with your organisation's information management policy for sensitive material
- Give her (or help her memorise) your contact details and/or those of a support agency such as Women's Aid
- Consider the need for immediate protection and placement away from the family
- Do everything you can to keep her and any children safe. This may involve having to contact the school to take the children out of class early, particularly if they are collected by a relative
- Get immediate advice if you are not sure what to do

Do not under any circumstances:

- Send her away or let her leave without a safety plan and follow up arrangements
- Approach her friends/family or community unless she asks you to do so (but even if she asks you, you should assess the friend/family/community member's credibility and potential risk)
- Approach community leaders for advice
- Share information with anyone without her express consent (unless there is a risk of immediate harm or she lacks capacity to give consent or she is unable to give informed consent) (see page 51)
- Attempt to mediate with family or any member of the community (see page 56)

Other actions

- Give the woman, if possible, a choice about who they see (gender/ethnic origin)
- Tell her about her rights to legal advice and representation (page 89)
- If necessary, record any injuries and arrange a medical examination (page 55)
- Discuss personal safety (page 48) and create a plan she thinks is workable
- Prepare an excuse/reason for her being with you in case someone sees her
- Establish if there is a family history of forced marriage, e.g. siblings forced to marry. Other indicators may include domestic abuse, self-harm, family disputes, unreasonable restrictions (e.g. withdrawal from education or 'house arrest') or missing persons within the family
- Advise her not to travel overseas. Discuss the difficulties she may face (page 38)
- Tell her that if she does have to travel, to use her British passport if she has dual nationality, and to give someone she trusts as many details as possible about her journey plans (and photocopies of passport and birth certificate if possible)
- Identify any potential criminal offences against her and refer to the police if appropriate

- Give her advice on what service/support she and any children should expect and from whom
- Ensure that she has the contact details for the lead worker/agency
- Keep a full record of decisions made and reasons
- Ensure any record is strictly confidential and, preferably, only available to named members of staff
- Consider making an application for a Forced Marriage Protection Order (FMPO) or other protective order (see page 76)
- Refer her, with consent, to support services such as Women's Aid/Rape Crisis (see page 146)
- Reassure her that whatever she decides to do, she can come back to you at any time for assistance

Remember:

If the person is lesbian, gay, bisexual or transgender (LGBT), refer to appropriate support groups (see page 147).

British Embassies and High Commissions can only help British nationals or, in certain circumstances EU or Commonwealth nationals. This means that if a non-British national leaves the UK to be forced into marriage overseas, the British Embassy or High Commission cannot assist them.

Contact the FMU if you know or suspect that a victim has been, or is being taken out of Scotland or abroad. In certain circumstances, it may be possible for them to alert the police and authorities at points of departure so that the victim and those accompanying them can be detained and prevented from leaving the UK (see below).

Under Part 1 of the Children (Scotland) Act 1995, a person with parental responsibilities and rights (PRRs) for a child may generally exercise those rights without the consent of other people with PRRs. There is an exception about taking a child outside the UK.

Section 2(3) says that no person shall be entitled to remove a child habitually resident in Scotland from, or to retain any such child outwith the UK, without the consent of a person who, for the time being, has and is exercising for the child either of the following parental rights:

- The right to have the child living with them or otherwise to regulate the child's residence
- The right, if the child is not living with them, to maintain personal relations and direct contact with the child on a regular basis

If in doubt, ask the Forced Marriage Unit for advice (see page 17).

9. Checklist: information required for all cases

Ideally, information should be gathered by a police officer or lead officer for forced marriage. However, in an emergency (for example if a victim is going overseas imminently), any practitioner may have to gather as much information as possible from the victim.

You may not be able to get all of the information listed below. Try to get as much relevant information as possible and remember that the priority should always be the safety of the victim.

All information should be stored in accordance with child protection and adult support and protection policies and procedures and consistent with record management procedures.

If the report is made by a third party, record their name, contact details and stated relationship to the woman.

See also good practice in information storing and sharing on pages 52 and 58.

Information to gather:

- Date of report
- Name of person under threat
- Nationality
- Age
- Date and place of birth
- Legal status: marital, immigration
- Passport details
- School details
- Employment details
- Full details of the allegation
- Name and address of parents or those with parental responsibility
- National Insurance number
- Driving licence number
- Names of friends and family who can be trusted and their contact details
- Names and ages of the woman's children, if any, and passport details (do they have their own or are they on their parents')
- Background information including schools attended (children), involvement with adult or child protection, GP or other health services
- Full details of the allegation
- Names and addresses of fiancé, spouse, parents
- Details of any threats, abuse or other hostile action against the person
- A recent photograph and any other identifying documents
- Note of any distinguishing features such as birthmarks and tattoos

- Establish the nature and level of risk to the safety (for example is she pregnant? Does she have a secret boyfriend or girlfriend? Is she already secretly married?)
- Establish if there are any other family members at risk of forced marriage or if there is a family history of forced marriage and abuse
- Any significant medical issues to be taken account of or additional needs

Agree

- Code word to ensure you are speaking to the right person if you phone
- How to contact them safely

If the woman is going overseas imminently

If the woman fears she will be forced into marriage, you should gather as much of the following information as possible in order to locate her:

- Her full name and date of birth
- A photocopy of her passport. Encourage her to note down her passport number and the place and date of issue. She may have two passports so try to find out which one she is travelling on. Depending on her age, she may be listed on her parents' foreign passport
- As much information as possible about the family (to be gathered discreetly) including:
 - ✓ Her father's name
 - ✓ Intended destination and any addresses where she may be staying overseas
 - ✓ When she is leaving and how (plane, train, car, ferry ports)
 - ✓ Potential spouse's name (if known)
 - ✓ The name of the potential spouse's father
 - ✓ Date of the proposed wedding
 - ✓ Names, addresses/phone numbers of extended family in the UK and overseas who may be directly or indirectly involved in helping the family with the forced marriage
- Information that only she is likely to know (to assist potential Embassy/British High Commission interview in case another person is produced pretending to be them)
 - ✓ Details of any travel plans and people likely to accompany her
 - ✓ Names and addresses of any close relatives remaining in the UK
- A safe means to contact her e.g. a secret mobile telephone which will work overseas. Record the number

- Details of any supportive third party whom the woman might contact whilst overseas or on her return
- An estimated return date. Ask her to contact you on return
- A written statement (in English or certified translation) from her explaining that she wants the police or others to act on her behalf if she does not return by a certain date
- Flight details, there and back
- Details of where she thinks she will be staying even if it is only the general area

Give the woman:

- Details of the nearest Embassy/British High Commission (can she memorise the number?)
- The phone number of the Forced Marriage Unit (can she memorise it?)
- Information about the implications of dual nationality (see page 99) (note: advise her to travel on her British passport if possible)
- Details of the department and practitioner who is handling her case

Also advise her to take emergency cash if she can, in the local currency and in hard currency (pounds, dollars, euros) in case problems arise in the country of destination.

Remember:

If the family is approached, they may deny that the woman is being forced to marry, move her elsewhere, expedite any travel arrangements and bring forward the forced marriage.

British Embassies and High Commissions can only help British nationals or, in certain circumstances EU or Commonwealth nationals. This means that if a non-British national leaves the UK to be forced into marriage overseas, the British Embassy or High Commission will not be able to assist them.

If they are not a British national, contact or advise the woman to contact the Forced Marriage Unit (page 17). The FMU can provide details of reliable non-governmental organisations overseas and the details of the embassy of their own nationality.

Section 3: Legal context and remedies

'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child should be a primary consideration.' United Nations Convention on the Rights of the Child, Article 3.1

9. Anti-Social Behaviour Crime and Policing Act 2014 and what it does

- Summary of provisions
- Offence of Forced Marriage in Scotland

10. The Forced Marriage Act and how it works

Summary of provisions

Forced Marriage Protection Orders

Third party applications for Forced Marriage Protection Orders

How the 2014 Act sits with the 2011 Act

- Q and A
- Case studies

11. Options for protection under the law: criminal law, adult and child protection

12. Options for protection under the law: other civil remedies

13. Forced marriage and immigration and nationality issues

9. The Anti-Social Behaviour Crime and Policing Act 2014 and how it works

Offence of Forced Marriage

The 2014 Act made forced marriage a criminal offence. This provides an additional layer of protection to victims from a practice that is a fundamental breach of human rights, and is also frequently accompanied by physical, psychological, financial, sexual and emotional abuse.

It did not replace the 2011 Forced Marriage Act.

Summary of provisions

Under Section 122:

A person commits an offence under the law of Scotland if he or she:

- (a) uses violence, threats or any other form of coercion for the purpose of causing another person to enter into a marriage, and
- (b) believes, or ought reasonably to believe, that the conduct may cause the other person to enter into the marriage without free and full consent.

For a victim who is incapable of consenting to marriage by reason of mental disorder, the offence under subsection (1) 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 coercion).

A person commits an offence under the law of Scotland if he or she:

- (a) practises any form of deception with the intention of causing another person to leave the United Kingdom, and
- (b) intends the other person to be subjected to conduct outside the United Kingdom that is an offence under subsection (1) or would be an offence under that subsection if the victim were in Scotland.

'Marriage' means any religious or civil ceremony of marriage (whether or not legally binding).

'Mental disorder' has the meaning given by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003.

It is irrelevant whether the conduct mentioned in paragraph (a) of subsection (1) is directed at the victim of the offence under that subsection or another person.

A person commits an offence under subsection (1) or (3) only if, at the time of the conduct or deception:

- (a) the person or the victim or both of them are in Scotland,
- (b) neither the person nor the victim is in Scotland but at least one of them is habitually resident in Scotland, or
- (c) neither the person nor the victim is in the United Kingdom but at least one of them is a UK national.

'UK national' means an individual who is:

- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;
- (b) a person who under the British Nationality Act 1981 is a British subject; or
- (c) a British protected person within the meaning of that Act.

A person guilty of an offence under this section is liable:

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine or both.

10. The 2011 Forced Marriage Act and how it works

Summary of provisions

The main provisions of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011³¹ are:

- To protect people from being forced to marry without their free and full consent
- To protect those who have already been forced into marriage without consent
- To clarify the authority of the Sheriff court for annulling (declaring invalid) such marriages
- To introduce Forced Marriage Protection Orders (FMPO) to protect people from being forced to marry or who have already been so
- To allow the following categories of person to apply for an FMPO:
 - ❖ The victim
 - ❖ A 'relevant third party', who can apply on behalf of a victim but does not need to seek leave of the court
 - ❖ Anyone on behalf of a victim, as long as they obtain the court's permission to make an application
- To allow the court itself to make an FMPO as part of other civil or criminal proceedings
- To make it a criminal offence to breach an FMPO
- To enable Scottish Ministers to apply the provisions of part one of the Act to civil partnerships
- To require statutory agencies to respond appropriately

Definition of 'force'

Under the Act, to 'force' someone into marriage includes:

³¹The Forced Marriage etc. (Protection and Jurisdiction)(Scotland) Act 2011:
www.legislation.gov.uk/asp/2011/15/contents

- Coerce using physical, verbal or psychological means, threatening conduct, harassment, or other means. This could include isolating them and not allowing them to see friends or go to school/college
- Knowingly taking advantage of a person's incapacity to consent to or understand marriage in general or the implications for them of a particular marriage. This could be, for example, an adult at risk or a child under 16

The conduct which forces a person to marry does not have to be directed against them. For example, if the perpetrator threatens to commit suicide, this would be seen by the court as force.

Forced Marriage Protection Orders

FMPOs are designed to prevent a forced marriage from occurring or to offer protective measures when a forced marriage has taken place. The court's powers are quite wide and they can tailor the terms of the order according to the specific needs of the victim. Orders may contain prohibitions, restrictions or requirements as the court thinks appropriate to stop or change the conduct of those who would force the victim into marriage.

Examples of the types of conditions that might be specified by an order the court might make are:

- To stop the protected person from going through the marriage ceremony
- To hand over to the court documents such as passports, birth certificates and travel documents
- To stop violent, threatening and intimidating conduct
- To disclose the whereabouts of a victim
- To stop someone from being taken to or from a specific place in Scotland/ or the UK, or taken abroad
- To facilitate or enable a person to return to Scotland within a specified period
- That the protected person must be taken to a place of safety designated in the order, or that the protected person be brought to a court at such time and place as the court specifies

Orders may also be made against other people, not named as respondents in the application. These can be third parties who are not directly involved but are aiding, abetting, counselling, procuring, encouraging or assisting another person to force, or to attempt to force, a person to enter into a marriage. This is to take account of the complexity of the issues, and because forced marriage can involve the wider community and many different people.

The court can also make an interim order if necessary.

An FMPO lasts as long as required. The court can order that the FMPO remains in force for a specified period of time, or no time can be set. If the FMPO is not time-limited, it will remain in force until the court recalls it.

Applying for an FMPO

The victim (the Act uses the term 'protected persons') or a third party (for example a local authority) can apply to the civil court for an FMPO.

It is possible to apply to the court for an interim order to provide immediate protection before the full order is made.

In certain circumstances, a civil or criminal court can also make an FMPO on its own initiative, without the victim or anyone else making a specific application to it. This can happen if the victim is involved in another civil or criminal action (for instance, they are applying for a protective civil order or are a witness in a criminal case where a crime has been committed against them) and the court considers that the circumstances of the matter are such that an FMPO should be made.

Third party applications for Forced Marriage Protection Orders

Victims of forced marriage may be reluctant to take legal action to protect themselves for fear of criminalising those involved, potential repercussions, including threats to their physical safety or child abduction, alienation of family and community and the stigma attached in involving their family and community. They may also not be in a position to take legal action on their own behalf.

The Act, therefore, allows people other than the victim to apply for an FMPO. This is known as a third party application.

Third parties who are particularly specified as 'Relevant Third Parties' (RTP) under the Act can apply without leave (permission) of the court. Relevant Third Parties are local authorities, the Lord Advocate and any other person specified by Scottish Ministers.

Anyone else can apply for an FMPO but they need to get leave of the court to apply. This is so that the court can assure itself that any third party is acting in the best interests of the victim.

Those working in child protection and with adults at risk of harm are most likely to come across cases of forced marriage and, therefore, need to consider the potential for an FMPO alongside existing measures of protection in order to discharge their statutory duties.

For all practitioners, this includes whether or not to apply for an order at all given concerns such as a victim's desire to remain anonymous and the risks to her involved in proceeding with an application for an order. Seeking an FMPO (for example when the victim is overseas) may alert the family. You should consider whether this might place the victim at greater risk of harm.

Making an application

Applications for an FMPO made by a local authority should be made via its legal department, in close liaison with the relevant frontline practitioner. Caseworkers and social workers should not try to pursue an application themselves. See the Scottish Courts website³² for more information about the application process.

It is possible, in an emergency, to make an application in the absence of the victim. This would be an 'interim forced marriage protection order'. This may be necessary if the victim is in immediate danger or at risk of being taken abroad.

All applications should be supported by affidavit (a sworn statement witnessed by a Notary Public). The court makes its decision on the civil burden of proof, on the balance of probability. There is, therefore, no 'threshold' to be met as in child protection cases.

An FMPO can be sought in other proceedings, for example applications for protective orders or actions under the Adult Support and Protection (Scotland) Act 2007³³, the Mental Health (Care and Treatment) (Scotland) Act 2003³⁴ and Adults with Incapacity (Scotland) Act 2000³⁵.

If the victim decides to retract, every effort should be made to ensure that she is withdrawing of her own free will and is not being coerced. But remember, your legal obligation to act in situations where a child or adult is at risk of harm may still require you to attempt to secure this through the proper procedures.

It is important to consider how any retraction might affect the victim's safety and what other safety measures may be required (see page 48)

- Court locations

Applications should be made to the Sheriff Court in whose sheriffdom the victim usually lives. If the victim does not ordinarily live in Scotland, the application should be made to the Sherriff of Lothian and Borders in Edinburgh.

Factors affecting a decision on which court is best placed to hear an application for an FMPO are likely to include whether the victim wants to remain anonymous; the risks involved if the victim proceeds with an application for a protection order and if

³² Scottish Courts website: www.scotcourts.gov.uk

³³ Adult Support and Protection (Scotland) Act 2007: www.legislation.gov.uk/asp/2007/10/contents

³⁴ Mental Health (Care and Treatment) (Scotland) Act 2003: www.legislation.gov.uk/asp/2003/13/contents

³⁵ Adults with Incapacity (Scotland) Act 2000: www.legislation.gov.uk/asp/2000/4/contents

they remain in the area; and the proximity to the court location and local facilities, including support networks.

See note on page 97 for women moving between different sheriffdoms.

For more on court locations see www.scotcourts.gov.uk

- Special measures

‘Special measures’ refer to physical protections and procedures that the court can order to be put in place in civil or criminal court proceedings, to support witnesses give their best evidence when they are concerned about going to court and facing their partner, family, and so on. Being able to give their best evidence can make a difference to the outcome of a case. This also applies to the 2014 Act where a person may be giving evidence in a criminal case.

The use of special measures should always be considered in **any** case where you are supporting a victim of forced marriage, not just in applications for an FMPO.

(Note: children have an automatic right to standard special measures.)

Examples of special measures are sitting behind a screen in the court room; having a supporter; giving evidence remotely or in private (or a combination of these measures). It is up to the judge to decide whether or not to approve special measures and, if so, which ones.

It is important to tell the victim about special measures. You should discuss them with her, and find out whether she wishes to use them as soon as possible if the victim is going to attend civil or criminal court hearings. Avoid making superficial judgements on a victim’s ‘capability’ based on your own observations. Remember that these provisions are there to assist victims give their own evidence, and they can request them.

In a civil case, the obligation to apply for special measures lies with the party responsible for bringing or defending the action, in this case either the victim, relevant third party or others. In the criminal court, the responsibility lies with the Procurator Fiscal. In both cases, the practitioner should ensure that the relevant application or notice to use special measures has been made to the court by the woman/child’s lawyer, the lawyer acting for any third party applicant or the Procurator Fiscal.

Guidance on special measures for vulnerable adult and child witnesses is at:

www.scotland.gov.uk/Publications/2008/04/21142140/0

You may also need to make other arrangements to help the victim such as visiting the court in advance to familiarise themselves with it and where they would sit. Some courts are able to arrange for the victim to enter and leave court through separate doors and have separate toilets available from those which the perpetrator(s) and general public would use. Most waiting areas are communal and could provide an

opportunity for perpetrators to intimidate and pressure the victim. Courts may be able to arrange for the victim to wait in another room.

The Procurator Fiscal will tell the victim if special measures have been granted. If a victim is concerned about intimidation at court, she should discuss these with either the VIA section of the Procurator Fiscal's office or Victim Support.

- **Interpreters**

The Scottish Court Service will provide an interpreter if the party/parties involved do not speak English as their first language. This is irrespective of whether solicitors are involved or public funding is available. An interpreter will generally be available for the applicant, respondent(s), and the victim if they are not an applicant but giving evidence as a witness. You should contact the relevant court to make the necessary arrangements. Family members must not be used to interpret (see page 45). If it is a criminal case and the victim is to be called as a Crown witness, the responsibility for arranging an interpreter lies with the Procurator Fiscal.

After an FMPO is issued

After the court has issued an FMPO or an interim FMPO, all practitioners should work closely with the victim, the police and any other support services to ensure it offers the level of protection envisaged and that ongoing support is available to victims as needed. The court can order that the FMPO remains in force for a specified period of time, or no time can be set. If the FMPO is not time-limited, it will remain in force until the court recalls it.

The applicant (the protected person, relevant third party or other party), and any other person affected by the FMPO, including those subject to its prohibitions and conditions, can go back to the court at any time to seek a variation of the conditions, or to have it recalled entirely. Therefore, your procedures must be such that court or any other papers relating to the FMPO should be dealt with immediately.

Similarly, the protected person should be made aware of this matter. They should be advised to contact their solicitor, their party applicant (if any) and the practitioner as soon as possible if they suspect that such an application will be made, or if they receive any papers whatsoever relating to their FMPO, particularly if they relate to revocation or variation of the FMPO.

Breach of FMPO

Breach of an FMPO is a criminal offence and punishable by imprisonment for up to 12 months, and/or a fine of up to £10,000. In more serious offences, the period of imprisonment can extend to up to two years.

The police may arrest without warrant any person whom they reasonably believe is committing or has committed a breach of an FMPO (not just a person named on the order).

The relevant third party or the victim should report the breach to the police in the first instance as this means it will be dealt with quickly and will be safer for the victim. If relevant, they should also contact the solicitor to go back to the court to report the breach. However, any person including, for example, a friend or relative of the protected person (even if not directly affected by the order) or a practitioner could report a breach of an FMPO to the police for investigation.

Fit with other legal remedies

An application for an FMPO is not an alternative to the work of the police and COPFS in investigating and prosecuting crimes. Crimes may be investigated and offenders prosecuted at the same time as an application for an FMPO is made or an order is in force. Forcing someone into marriage is a criminal offence. However, other criminal offences may also be committed. Perpetrators – usually parents or family members (but could also include members of the wider community) – could be prosecuted for offences including stalking, threatening and abusive behaviour, breach of the peace, assault, kidnap, abduction, theft (of passports), imprisonment and murder. See section 12, page 89 for more information.

Local authorities should refer to the statutory guidance and these guidelines as soon as they are alerted to a potential case of forced marriage. Practitioners may only have one chance (see page 9) to speak to a potential victim of forced marriage and the opportunity to take effective action may be limited, particularly if there is the threat of removal from the country. If children are involved, you may be able to use child protection procedures. See page 60 for information about ensuring safety of victims.

You should speak to your legal department so they are fully aware and can advise you about the types of legal remedies that might be available to support a victim from this early stage.

An FMPO may be appropriate alongside other remedies. In some cases, for example, if the forced marriage has not yet taken place, it may be more appropriate to seek another civil order or involve the police if there is a danger to the victim's physical safety. Assessing the level of risk to the victim is essential in deciding how to proceed. Information about other legal remedies available is on page 90.

You should consider referring a victim to a solicitor for other assistance/protective measures under civil law. Ideally, this should be an experienced Family Law solicitor and/or a solicitor versed in immigration rights. The Family Law Association of Scotland [www.familylawassociation.org/index.asp] and the Law Society of Scotland [www.lawscot.org.uk/] can help with this.

Ending a forced marriage

Depending on the circumstances of the marriage, a forced marriage may be legally valid until the court makes an order for divorce or grants a declarator of nullity. In other cases, a marriage may never have been legally valid but a party to the

purported marriage may wish to seek a declarator of nullity to put the position beyond doubt and to show that the marriage never existed. There are strict legal requirements which govern whether a marriage is valid under Scots law. The rules for recognising a marriage vary depending on the country in which the marriage took place. When considering the validity of a marriage, particularly a marriage which took place overseas, you should seek specialist legal advice.

Partnership working to protect victims

The Scottish Government strongly promotes a multi-agency response as the most effective way to tackle domestic abuse. This approach is clearly transferrable to forced marriage cases which require the same level of inter-agency co-operation and information sharing to protect individuals and respond in a timely and effective way.

Close liaison with other departments and agencies is vital as cases progress through the courts and also following the issuing of an FMPO, when contact with the victim needs to be maintained not just to monitor their welfare but also to ensure the order remains effective.

The statutory guidance www.scotland.gov.uk/forcedmarriagevised2014 requires that local authorities forge links with local schools, health services, the police and the voluntary sector to agree an appropriate local system for referrals, support and response. This includes close liaison with partners to agree which agency will act on an FMPO application in specific circumstances. There should be links between local Violence Against Women Partnerships and Adult Support and Protection and Child Protection Committees.

Practitioners need to work consistently with their internal/organisation information sharing and referral protocols on forced marriage. You also need to take account of the networks within extended families and communities; as well as the speed at which information may spread through these.

Family/community members may work in your agency and, therefore, be party to information about a referral/application. If they use their position as an employee to gain information, this would be, at least, a breach of organisational conduct, and also possibly a professional breach which should be reported to their professional body. It may also be a breach of data protection legislation and, therefore, a criminal offence.

You could be put under enormous pressure to divulge information and face conflict with professional duties compromised by very strong community ties.

11. How the 2014 Act sits with the 2011 Forced Marriage Act

The 2014 Act works alongside the 2011 Act. Victims can use the Forced Marriage Act 2011 to apply to the civil court for a Forced Marriage Protection Order while the police and COPFS undertake criminal investigation/proceedings under the Anti-Social Behaviour Crime and Policing Act 2014.

Q and A

Q: How do FMPOs fit with the criminal offence of forced marriage?

FMPOs are a civil remedy. They exist alongside the criminal offence of forced marriage. This means that a victim can apply for an FMPO to the civil court separately from criminal proceedings. Depending on the circumstances, criminal proceedings may take place in tandem.

Q: What happens if a person under 16 discloses to a teacher, carer, support organisation and so on that they may be in danger of being forced into marriage?

The relevant child protection procedures will be activated.

What are the penalties for forcing someone into a marriage in Scotland?

Q: The maximum penalty for forced marriage is seven years' imprisonment.

Q: What is the level of proof required for an FMPO?

The point of an FMPO is to protect someone. When deciding to grant an FMPO, the court looks at the whole circumstances and decides, on balance, whether there is at least enough risk of something happening to a person in order to justify granting an order.

The court does not have to be satisfied beyond reasonable doubt (the criminal standard) that, without granting the order, harm will take place.

If there is not enough evidence to obtain a conviction, there is nothing to prevent a victim seeking a civil order. The civil and the criminal routes are about different things. The criminal offence deals with acts that have already been committed. The civil route is about preventing future acts.

Q: If someone's behaviour may constitute a breach of the conditions of an FMPO order what level of proof would be required to allow this to proceed to court to establish that a criminal offence in breach of the FMPO has taken place?

The standard of proof needed to convict an accused person of any criminal offence is 'beyond reasonable doubt'.

Q: What level of proof is required to allow an accusation of forced marriage to proceed to court and be prosecuted under either the specific criminal offence and/or any other criminal offences?

The COPFS Prosecution Code sets out the decision-making process followed by the Crown when it receives a report of a criminal offence. It sets out both the evidential considerations and the public interest considerations relevant to decision making.

Q: Would COPFS proceed with a prosecution without the victim's consent or involvement, if there was sufficient evidence from other sources?

The consent of the victim is not a prerequisite for criminal proceedings in Scotland. The views of the victim are one factor for prosecutors to consider when deciding whether to initiate or continue with criminal proceedings in a case. However, prosecutors have a duty to make decisions based on the wider public interest.

Q: How are those who give evidence in a forced marriage case protected?

Both the criminal and civil courts provide a range of special measures such as live TV links, screens and a supporter to help vulnerable victims and witnesses to give their best evidence.

Q: Can a victim apply for legal aid?

Yes, a victim can seek legal assistance. Applications for legal aid must be made by a solicitor, on behalf of the client. The Scottish Legal Aid Board grants legal assistance if the applicant meets the statutory eligibility tests.

Case studies

1: Adult with disability

SW is 20 and living at home with her parents and siblings. SW's father perpetrates domestic abuse towards the family.

SW has learning difficulties and receives support from various agencies. She is attending college but will be finishing within the next year. She receives Disability Living Allowance which her mother manages.

SW has told one of her support workers that things at home have been quite difficult. There have been lots of arguments, and this really upsets SW. She thinks that she would like to leave home but realises she needs support to do this. SW is too scared to talk to her mother about this because she knows it will cause more arguments.

Things have deteriorated since SW's mother found texts from boys in SW's college class on her phone. Her parents have become more controlling and are not letting SW out by herself. They have been getting an older sibling to check her phone to see who she is messaging. SW has also mentioned that her parents are telling her what clothes she should be wearing. SW's support worker has noticed that SW has started wearing a head scarf.

Suggested action:

- Call adult protection meeting with partners
- Access capacity to consent to marriage and an arranged marriage
- Carry out fact finding discreetly and take account of the impact of domestic abuse in the family and the individual's ability to keep information safe
- Assess parents' relationship with their culture and their views on marriage
- Do not mediate with family
- Do not assume that the individual's mother is a protective factor
- Think of long-term consequences of any action taken (this will apply in all cases)

2: Young person at school (adult)

AT's guidance teacher became concerned after there was a dramatic change in AT's behaviour after the family returned from an unexpected two-month trip abroad to visit relatives. AT, who is 17, used to be a very talkative, happy young woman who had good relationships with her peers. Since returning to school AT has been withdrawing from her friends and other members of staff have noticed that AT has become quite tearful. When questioned, AT says that everything is fine and is very closed off.

Previously, AT's mother was quite active within the school but recently, AT's step-father has been taking over and has been attending meetings at school without AT's mother.

Teachers have commented that AT's step-father does not seem interested in supporting AT to continue with her education, and has hinted that AT will be looking for a job and may be leaving at the end of the school year.

Suggested action:

- Discuss concerns with forced marriage lead professional or specialist agency
- Speak to AT confidentially about staff concerns
- Do risk assessment to ensure that she has a safety plan
- Consider linking AT with a specialist service which can discuss options with her
- Do not speak to parents about your concerns

3: Young person under 16

EB's older sister, CD, recently left home after seeking help because she thought her parents were going to force her to get married. CD decided not to pursue any legal action or protection and moved out of the area, not telling her family where she is because she thinks this may put her in danger. CD told professionals that she was worried that EB might be forced to take her place as all the arrangements for the marriage have already been made between the two families.

EB is 14 and is about to finish 2nd year in high school. She is adamant that there are no plans for her to get married. She wants to stay on at school until 6th year and then go to college. EB says that her sister made up all the accusations about their parents and was lying when she talked to the police. EB has said during class discussions

that she believes that it is her religious obligation to obey her parents and do as they ask.

EB is not allowed to join any after school activities. She does not have a mobile phone as her parents will not allow her to have one. She has no friends at school and spends break times by herself. She has poor attendance at school and teachers describe her as being very withdrawn.

Suggested action:

- Consult with your forced marriage lead professional and follow child protection procedures
- Consult with specialist agencies which could support EB and offer her general advice
- Consider Forced Marriage Protection Order/Child Protection Order

4: Young person under 16

HM was living with her aunt, uncle, their three children and grandmother because of problems between her parents. She was experiencing abuse from her aunt, uncle and grandmother. There was police involvement on several occasions because of threats to her from her uncle, father and step father.

A children and families support worker raised concerns about HM's physical and emotional wellbeing. HM was 14 and very isolated. Her school attendance was very poor and she would often arrive at school unkempt and wearing dirty clothes.

HM shared a room with her grandmother and was treated very differently from the other three children within the house. She was not allowed a mobile phone or internet access. She was not allowed to eat with everyone else and confided in her support worker that often she was very hungry. She was not allowed to use the bathroom without permission. She was required to wear traditional clothing. She was not allowed to attend any after school activities and had very few friends.

HM mentioned to her support worker from a BME organisation that she believes when she turns 16 she will be required to marry one of her relatives to allow them to come into the UK, as this has happened to other members of her family. However, when HM was interviewed by a social worker she did not disclose these fears.

Suggested action

- Call for child protection case conference
- Consult with specialist agencies which could support HM and give general advice

- Consider Forced Marriage Protection Order/Child Protection Order
- Consider risk to life and possible abduction
- Do not discuss concerns with any family members
- Recognise that HM may not disclose information to all professionals; this does not mean that her fears are not genuine
- Carry out risk assessment paying particular attention to safety planning if HM is to be removed. The identified carer should be able to support the complexities and risk to the child. A kinship placement is not appropriate.

5: LGBTI victim

SM came to Scotland from overseas after being forced to marry her husband. She does not speak any English. She presented at Women's Aid with her friend, MP, and her two-year-old child. MP was also fleeing a forced marriage and said that she had agreed to her engagement under coercion as she believed that this would 'cure' her of being a lesbian. SM and MP want to be accommodated together. Both believe that if they are found that they will be killed for dishonouring their family and communities.

Suggested action:

- Understand that being LGBTI is considered sinful and 'curable' in many societies and that those who identify as being LGBTI are not always able to talk about this
- Explain explicitly that your service is LGBTI inclusive and for anyone regardless of sexual orientation or gender identity. But recognise that SM and MP do not need to disclose the nature of their relationship
 - Include risk from the extended family and wider community in your risk assessment

6: Young person under 16

Ms H is 13, of Roma descent, and lives with her grandparents. Before the summer holidays, during a meeting with the school, her grandmother informed the head teacher that Ms H would not be attending school after the summer break as the family had made plans for her and a 15-year-old Roma boy from another area to marry. The head teacher informed the local social work department who informed the police. A joint investigation resulted in the local authority applying for a civil Forced Marriage Protection Order. An FMPO was obtained and this prevented the

forced marriage taking place. Ms H has continued her education supported by the local authority.

7: Male victim

Mr B, age 19, lived at home with his parents. They told him that they had arranged a wedding for him in Pakistan. Mr B refused to cooperate with their plans and left the family home to stay with a friend in another town. Not knowing where he was staying, Mr B's parents reported him missing to the police.

The same day Mr B went into a police station and informed them that he was safe and well but that he did not wish his whereabouts disclosed to his parents. Although Mr B did not think he was at any risk from his parents, the police carried out a full risk assessment and worked out a safety plan. Mr B was given advice and made aware of his option to apply for a Forced Marriage Protection Order. Mr B, as an adult with capacity, decided that he did not wish to proceed down this route.

12. Options for protection under the law: criminal law, adult and child protection

Everyone has the right to live without fear and abuse and to protection from crime.

It is open to anyone to contact the police if they or their children are in any danger. A third party can also contact the police if they are concerned for someone's safety

There are various other options under Scottish criminal and civil law which can protect people threatened with or in a forced marriage. Some require the police or local authority to take action whilst others require the victim to apply to the court.

The relevance of the options below vary according to where the marriage took place; where the victim is; the circumstances of the victim, including their age, immigration status and so on. The information will give you an indication of the different possibilities for protecting someone who is already in or at risk of a forced marriage but you should seek further information about the detail.

Publicly-funded legal aid³⁶ may be available if someone is not otherwise able to afford legal advice or representation, subject to statutory eligibility tests. Funding for legal advice is not counted as public funds, and individuals may be entitled to free legal advice whatever their immigration status. Depending on an individual's financial circumstances, they may have to pay a contribution towards their legal costs.

It is important to emphasise to victims that the law, on its own, cannot be relied on to keep them safe because some perpetrators will disregard it. Victims have to use every way they can to stay safe. This includes having a safety plan (see page 60).

For civil procedures, it is important to get legal advice as early as possible, preferably from an experienced family law solicitor. Information about how to find a solicitor is at: www.lawscot.org.uk and www.familylawassociation.org/index.asp.

For further information about domestic abuse and the law see www.scottishwomensaid.org.uk

Criminal law

Whilst section 122 of the Anti-Social Behaviour Crime and Policing Act makes an offence of 'forcing someone to marry' (see page 72), there may be other criminal offences. Perpetrators – usually parents or family members – could be prosecuted for offences including stalking, harassment, threatening and abusive behaviour, assault, kidnap, plagium (theft of a child), theft (of passport), extortion, abduction and

³⁶ Further information can be found on the Scottish Legal Aid Board website at: www.slab.org.uk/

murder. Sexual intercourse without consent is rape³⁷, regardless of whether this occurs within a marriage. A woman who is forced into marriage is likely to be raped, and may be raped until she becomes pregnant.

Assisting in a criminal offence is also prosecutable.

The immigration legislation and rules also provide protection for adults, children and young people. The age of entry into the UK for spouses, fiancés, civil partners, unmarried or same sex partners is 18, and assisting in an unlawful entry is a criminal offence.

There are specific offences to protect children and deal with criminal behaviour such as child abduction, cruelty to persons under 16 (including neglect and abandonment), failure to secure regular attendance at school of a registered pupil and physical punishment of children.

The Sexual Offences (Scotland) Act 2009³⁸, contains provisions which criminalise people engaging in sexual activity with children under the age of 16, whether the conduct is apparently consented to by the child or not. It is not a defence to these offences that the accused was married to the child.

Adult protection

There is a range of protective measures under legislation including the Adult Support and Protection (Scotland) Act 2007³⁹, Adults with Incapacity (Scotland) Act 2000⁴⁰ and the Mental Health (Care and Treatment) (Scotland) Act 2003⁴¹ which can protect adults at risk. In certain circumstances, the police can intervene to protect adults at risk. See more on adult support and protection on page 130.

Child protection

Social work services may approach the police and ask for their assistance in undertaking a joint investigation. Social work services and police have a clear statutory role in deciding whether an investigation should take place. The way in which this is to be handled should be covered in the local inter-agency child protection procedures. A joint approach must always be considered if it is thought that a child or young person is at immediate risk of forced marriage.

³⁷ For more information on the definition of rape see Sexual Offences (Scotland) Act 2009: www.legislation.gov.uk/asp/2009/9/contents

³⁸ Sexual Offences (Scotland) Act 2009: www.legislation.gov.uk/asp/2009/9/contents

³⁹ Adult Support and Protection (Scotland) Act 2007: www.legislation.gov.uk/asp/2007/10/contents

⁴⁰ Adults with Incapacity (Scotland) Act 2000: www.legislation.gov.uk/asp/2000/4/contents

⁴¹ Mental Health (Care and Treatment) (Scotland) Act 2003: www.legislation.gov.uk/asp/2003/13/contents

For more information about legislation, terms and powers relating to child protection see www.scotland.gov.uk/Publications/2010/12/09134441/0. This document also has a section on honour-based violence and forced marriage.

In a joint investigation, key agencies such as social work services, the police and health services should plan and carry out their respective tasks in a coordinated way. This should not preclude any other agencies or individuals becoming involved. This could be, for example, education services, exercising their duties as the Named Person under the Children and Young People (Scotland) Act 2014; third sector support organisations supporting a child throughout an investigation; and adult services identifying risk factors. Within a joint investigation, agencies will have, at times, different responsibilities to fulfill, but associated activities, including the designation of a place of safety, should be planned together.

Young people between 16 and 18 who are still subject to a compulsory supervision order by a Children's Hearing can be viewed as a child. Young people over the age of 16 may still require intervention to protect them. The Named Person approach covers people up to and including those who have attained the age of 18 while attending school covered by part 4 of the Children and Young People (Scotland) Act 2014.

Emergency child protection measures

In an emergency involving a child or young person, the police have a specific power under Section 56(1) of the Children's Hearings (Scotland) Act 2011⁴² ⁴³ to ensure the immediate protection of children or young people believed to be suffering from, or at risk of, significant harm, commonly referred to as 'Police Emergency Powers'. This may result in the child or young person being removed to a place of safety. These measures are only used in an emergency.

The Children's Hearings (Scotland) Act 2011 (Child Protection Emergency Measures) Regulations 2012⁴⁴ require certain people to be informed when a child or young person is removed under this section including children's social work services within the local authority where the child or young person is ordinarily resident and where the designated place of safety is deemed to be. Under Section 56(3) of the Children's Hearings (Scotland) Act 2011, the child or young person can only be kept in a place of safety for 24 hours and further protective measures may have to be

⁴² Children's Hearings (Scotland) Act 2011 www.legislation.gov.uk/asp/2011/1/contents

⁴³ <http://clanchildlaw.org/wp/wp-content/uploads/2011/08/Act-content-and-comparison-as-amended-by-Modification-of-Primary-Legislation-Order-2013.pdf>

Equivalent provisions in the Children (Scotland) Act 1995 Act & New Provisions
<http://clanchildlaw.org/wp/wp-content/uploads/2011/08/Act-content-and-comparison-as-amended-by-Modification-of-Primary-Legislation-Order-2013.pdf>

⁴⁴ Children's Hearings (Scotland) Act 2011 (Child Protection Emergency Measures) Regulations 2012:
www.legislation.gov.uk/ssi/2012/334/made

sought, for example a Child Protection Order (CPO), see below. Note that emergency measures cease when a CPO is made.

See also below under Children's Hearings.

Child Protection Orders (CPO)

Anyone, including the child, may apply to the sheriff for a Child Protection Order (CPO) under section 37(1) of the Children's Hearings (Scotland) Act 2011. A local authority can also apply for a CPO under section 37(1) if it has reasonable grounds to suspect that a child is suffering or will suffer significant harm, and if its enquiries into this are being frustrated by access to the child being unreasonably denied. An application for a CPO can also be made by anyone to a Justice of the Peace under section 55. Under sections 37(2) and (3) a CPO can authorise more than removing a child to a place of safety. The other remedies in that section may be relevant to forced marriage.

In most cases, a CPO will authorise the applicant to either remove the child to a place of safety or, alternatively, prevent their removal from such a place. Directions may be attached to a CPO, regulating matters such as the child's contact with other people. A CPO may also direct that a medical examination takes place, although this does not override the child's capacity to consent or otherwise to such an examination under the Age of Legal Capacity (Scotland) Act 1991⁴⁵ (section 186 of the Children's Hearings (Scotland) Act 2011). Once a CPO is made, the applicant must inform the Principal Reporter who, if no application to vary or terminate the CPO has been made, must convene a Hearing to consider the continued protection of the child.

Place of safety/warrants to secure attendance

Children's hearings, on application from the Principal Reporter, or the sheriff, also have powers to issue warrants in certain circumstances, which may authorise the searching, finding and keeping of a child in a place of safety pending a children's hearing or hearing before the sheriff. A child (in this case, someone under 18) could also, under section 38 of the Children (Scotland) Act, 1995 (as amended by the Children's Hearings (Scotland) Act 2011⁴⁶) request that the local authority provides them with short-term refuge.

⁴⁵Age of Legal Capacity (Scotland) Act 1991: www.legislation.gov.uk/ukpga/1991/50/contents

⁴⁶ Schedules 5 and 6 of the 2011 Act, provide details of amendments and repeals made to the 1995 Act.

<http://www.legislation.gov.uk/asp/2011/1/schedule/5>
<http://www.legislation.gov.uk/asp/2011/1/schedule/6>

Child Assessment Orders (CAO)

The Children's Hearings (Scotland) Act 2011 also provides for the local authority to apply for a Child Assessment Order (CAO) under section 35 if it has reasonable cause to suspect that a child or young person is being neglected or being treated in such a way that they may be suffering, or likely to suffer, significant harm and it is unlikely that the assessment could be carried out, or carried out satisfactorily, unless the order is made.

The CAO requires any person in a position to do so to produce the child or young person; may permit a child to be taken or kept in a specified place during the life of the order; and may include directions about contact between the child and any other person. This allows any assessment needed to take place so that practitioners can decide whether they should act to safeguard a child or young person's welfare.

The CAO may also require the child to undergo a medical examination, although the child's capacity to consent to such an examination mentioned for CPOs (see above) would apply. If an application is made, and the sheriff considers that the conditions for making a CAO are satisfied, the order must begin no later than 24 hours after the order is granted and may not exceed three days.

Remember:

There is no legal requirement for a parent or other adult to give consent or be present when a police officer speaks to a child or young person in order to establish their welfare or any wellbeing concern. Indeed, when it is suspected that an adult who is present has had some involvement in the child protection issue being enquired into, the officer should endeavour to speak with the child or young person separately. It should be considered whether an adult's refusal to permit lone access to speak with the child or young person might raise suspicion of risk of harm.

If entry to premises or any part of premises is refused, police should consider whether it is appropriate to exercise their emergency powers under Section 56(1) of the Children's Hearings (Scotland) Act 2011⁴⁷.

A child or young person may wish a choice of a male or female police officer. They may, or may not, want to see a police officer from their own community. Their preferences should be considered and accommodated if possible, but the immediate safety and wellbeing of the child or young person are the priorities.

In all cases, staff should ensure that the Child Protection Register has been checked in accordance with local inter-agency child protection procedures.

Practitioners may be placed under pressure from relatives, those with influence within the community, councillors, MSPs or MPs to say where the child or young person has gone. DO NOT divulge this information.

⁴⁷ Children's Hearings (Scotland) Act 2011: www.legislation.gov.uk/asp/2011/1/contents

Children's Hearings and compulsory supervision orders

Under Section 22(1) of the Children (Scotland) Act 1995, the local authority has a duty to safeguard and promote the welfare of children in need in their area, and, so far as is consistent with that duty, to promote the upbringing of such children by their families by providing a level of services appropriate to those children's needs.

Under Section 60 of the Children's Hearings (Scotland) Act 2011 the local authority has a duty to make enquiries into the circumstances of any child who may be in need of a compulsory supervision order and to refer the child to the Reporter if the inquiry indicates a compulsory supervision order may be necessary.

Referral to Children's Hearing by the Reporter

Anyone can refer a child to the Reporter if the child may require a compulsory supervision order, either because of concerns over their welfare or in order to address offending behaviour. On receiving the referral, the Reporter will conduct an investigation, involving an assessment of the evidence supporting the ground for referral, the extent of concerns over the child's welfare and behaviour and the level of co-operation with agencies, which all lead to an assessment of the need for compulsory measures of supervision.

The Principal Reporter may refer the case of a child to a Children's Hearing to consider whether or not a compulsory supervision order is required for the protection, guidance, treatment or control of a child. The grounds for referral are set out in section 67 of the Children's Hearings (Scotland) Act 2011.

In particular, section 67(2)(p) and (q) (amended and inserted by section 13 of the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Act 2011) include the grounds that a child (i) has been, is being, or is likely to be, subjected to physical, emotional or other pressure to enter into a civil partnership, or forced into a marriage, (ii) is, or is likely to become, a member of the same household as such a child⁴⁸.

In making the assessment, the Reporter will rely on information from other agencies, most commonly social work and education services, although healthcare staff may also be asked to contribute. If the Reporter decides that there is sufficient evidence to need supervision measures, the child will be called to a Children's Hearing. The investigation can take place at the same time as a criminal investigation or criminal court case, but the focus will remain on the needs and welfare of the child or young person.

⁴⁸ Section 67(2) of the Children's Hearings (Scotland) Act 2011 was amended by section 12A of the Forced Marriage etc. (Protection and Jurisdiction)(Scotland) Act 2011: www.legislation.gov.uk/asp/2011/15/contents establishing a separate ground for a child being forced into a marriage, 'force' being construed in accordance with section 1 of the Forced Marriage Act.

Compulsory supervision order made by Children's Hearing

Compulsory supervision orders (CSO) are the most common form of compulsory supervision made by Children's Hearings. In urgent cases, if the hearing is not able to determine whether to make a CSO and the circumstances are such that for the child's protection, guidance, treatment or control it is considered necessary, an interim compulsory supervision order (ICSO) can be made. Children who are referred on care and protection grounds, as well as those referred on offence grounds, can be the subject of a compulsory supervision order. Supervision measures vary, although the most common involve supervision at home by a social worker. In other cases, a child could be required to live away from home, for example with foster carers, in a local authority home or in a residential school. It is the statutory responsibility of local authorities to implement compulsory supervision orders.

Section 134 of the Children's Hearings (Scotland) Act 2011 places a duty on a relevant person, when a child is subject to a compulsory supervision order, to give notice to the Principal Reporter in the hearings system and the relevant local authority of any proposal to take the child to live out with Scotland not later than 28 days prior to doing so. This proposal would then be considered by a Children's Hearing.

See also Place of Safety/Warrants above.

Excluding people from Children's Hearings proceedings as child protection measure

Sections 76 and 77 of the Children's Hearings (Scotland) Act 2011 and Rule 59 of the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013⁴⁹, provide a power for the hearing to exclude relevant persons or their representatives from attending any parts of the hearing for as long as is necessary in the interests of the child in order to obtain the views of the child if the presence of such a person is preventing the hearing from obtaining the views of the child or is causing significant distress to the child. Current practice allows for a single hearing to achieve this by allowing a child and relevant person to attend separately where risk is identified as above.

In care proceedings, local authorities are required to demonstrate to the court that they have considered family members and friends as potential carers at each stage of their decision-making. However, in cases of forced marriage, professionals should exercise extreme caution in how they evidence this. Family group conferences are not appropriate in these cases (see page 56).

⁴⁹Rules of Procedure in Children's Hearings Rules 2013:
www.legislation.gov.uk/sdsi/2013/9780111020326/contents

13. Options for protection under the law: other civil law remedies

The courts in Scotland can grant civil orders to protect those threatened with, or already in, a forced marriage.

General protective orders

The following civil remedies may offer some protection or assistance to an adult, young person or child who is being, or has been, forced into a marriage:

- A common law interdict⁵⁰ with power of arrest under the Protection from Abuse (Scotland) Act 2001⁵¹
- An interdict or civil non-harassment order⁵² under the Protection from Harassment Act 1997⁵³
- A matrimonial interdict under the Matrimonial Homes (Family Protection) (Scotland) Act 1981⁵⁴ with power of arrest under 'the 2001 Act' (available within marriage, against the spouse only)
- A domestic interdict under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 with power of arrest under 'the 2001 Act' (available only to couples who are or were living together)
- An exclusion order⁵⁵ under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (available to spouses or cohabiting couples only)
- A 'domestic abuse' interdict with a power of arrest under the Domestic Abuse (Scotland) Act 2011⁵⁶ with a power of arrest under the 2001 Act. Breach of such an interdict is a criminal offence punishable by a fine or imprisonment or both
- A declarator of nullity of marriage (that the marriage is void meaning that it is considered legally never to have existed). This can be obtained in the Sheriff Court under the Forced Marriage etc. (Protection and Jurisdiction)(Scotland) Act 2011⁵⁷
- Divorce (ends the marriage under the law). A spouse can apply for a divorce if the marriage has 'broken down irretrievably'; this can be with or without the

⁵⁰ An interdict is a court order which bans someone from doing something. For instance, it can ban someone from acting in a certain way or from being in a certain area.

⁵¹ Protection from Abuse (Scotland) Act 2001: www.legislation.gov.uk/asp/2001/14/contents

⁵² A non-harassment order bans a person from harassing another.

⁵³ Protection from Harassment Act 1997: www.legislation.gov.uk/ukpga/1997/40/contents

⁵⁴ Matrimonial Homes (Family Protection) (Scotland) Act 1981:
www.legislation.gov.uk/ukpga/1981/59/contents

⁵⁵ An exclusion order suspends a person's right to live in a home.

⁵⁶ Domestic Abuse (Scotland) Act 2011: www.legislation.gov.uk/asp/2011/13/contents

⁵⁷ Forced Marriage etc. (Protection and Jurisdiction)(Scotland) Act 2011:
www.legislation.gov.uk/asp/2011/15/contents

consent of the other spouse and using an ordinary or simple procedure; more information about divorce at www.familylawassociation.org/index.asp

- Exclusion order after divorce under section 14(2)(d) of the Family Law (Scotland) Act 1985⁵⁸

Note that a woman must have been in the UK for at least 28 days to be eligible to apply for a civil protection order. Further, if she moves from one place to another in Scotland, and she has moved outwith the jurisdiction of the sheriffdom covering her original home (for example, she moves from Edinburgh to Inverness), she will have to live in the new area for at least 40 days before she can apply to the local courts for a Forced Marriage Protection Order or other civil order.

Homelessness legislation

The Housing (Scotland) Act 1987⁵⁹, Housing (Scotland) Act 2001⁶⁰ and the Homelessness etc. (Scotland) Act 2003⁶¹ outline local authority duties to those experiencing homelessness. All homeless people who are unintentionally homeless have the right to settled accommodation. A statutory Code of Guidance for local authorities⁶² was published in 2005, supplemented by Prevention of Homelessness Guidance in 2009⁶³. They establish that that an individual has the right to live in safety and feel secure in their own home and that local authorities have a duty to assist and to provide temporary or settled accommodation for those experiencing domestic abuse (see paragraph 7.2 in the Code of Guidance and 115 in the Prevention of Homelessness Guidance). Forced marriage is a form of domestic abuse.

Protecting children

See previous pages.

⁵⁸ Family Law (Scotland) Act 1985: www.legislation.gov.uk/ukpga/1985/37

⁵⁹ Housing (Scotland) Act 1987: www.legislation.gov.uk/ukpga/1987/26/contents

⁶⁰ Housing (Scotland) Act 2001: www.legislation.gov.uk/asp/2001/10/contents

⁶¹ Homelessness etc. (Scotland) Act 2003: www.legislation.gov.uk/asp/2003/10/contents

⁶² www.scotland.gov.uk/Publications/2005/05/31133334/33366

⁶³ www.scotland.gov.uk/Publications/2009/06/08140713/14

14. Forced marriage and immigration and nationality issues

Note that it is illegal to give immigration advice unless you are authorised to do so. If immigration advice is required you should refer to an authorised adviser.

The [UK Visas and Immigration](#) and the Forced Marriage Unit (see page 17) can provide further detail on issues relevant to immigration, nationality and forced marriage.

Forced marriage and visas

If a woman has been forced to marry someone from overseas, the latter may want to apply for a spousal visa giving them official permission to enter, and join her in, the UK.

The age at which someone can sponsor or be sponsored as a spouse is 18.

At first, a spouse will be granted permission to stay in the UK for a probationary period of two years (this applies to those who were granted a spousal visa before 9 July 2012. For those who applied after this date, there is a 5- and 10-year route to settlement as a spouse). At the end of this time, if still married, the sponsoring spouse would normally apply for them to stay in the UK permanently. This is called indefinite leave to remain (ILR).

They will not be granted a spousal visa to come to the UK if the woman makes a disclosable statement saying that she does not support her spouse's application.

If the spouse is already in the UK and wants to be granted ILR, and this is against the woman's wishes, it may be possible to get the spousal visa revoked and the spouse may be asked to leave the country.

For more information see UK Visas and Immigration:

www.gov.uk/government/organisations/uk-visas-and-immigration

Domestic abuse, immigration and 'no recourse to public funds'

If a woman has come to the UK from overseas on a spousal or other temporary visa, such as a student study visa, she may not have indefinite leave to remain, exceptional leave to remain or a right of abode in the UK. Since she has no permission to remain in the UK permanently, she is, therefore, likely to be ineligible to obtain 'public funds', such as welfare benefit payments (income support, housing benefit) and access to temporary and permanent local authority accommodation. This has a direct impact on her ability to get accommodation and support, including refuge provision. (Note that this does not prevent her from applying for housing association accommodation as this does not come under the definition of public funds).

There is guidance from the Home Office on Recourse to Public Funds:
www.gov.uk/government/uploads/system/uploads/attachment_data/file/284160/Public_funds_v12_0EXT.pdf

Women who are fleeing an abusive partner/husband are able to apply for permission to stay in the UK for three months while they apply to settle as a victim of 'domestic violence'. This is called the 'Victim of Domestic Violence Concession'. They can apply for this concession if:

- They have permission to be in the UK as the partner of a British citizen, a person settled in the UK, or a member of HM Forces who has served for at least four years
- They are destitute, that is they do not have enough money to support themselves or pay for somewhere to live. If the concession is granted, they will be able to apply for financial help from the UK Government

Full details at 'apply to settle in the UK': www.gov.uk/settle-in-the-uk/y/you-re-the-family-member-of-a-british-citizen/no/on-a-work-visa/tier-5

These applications require supporting evidence. You could help a woman to compile this. You can also help with women's applications under the above rule by providing evidence of domestic abuse (for example a GP could provide a medical report).

Dual nationality

If a person is a British national and also holds the nationality of another country, they are considered to be a dual national. This may mean that, in the country of their other nationality, the authorities may view them as being solely or primarily nationals of that country and treat them accordingly. They may not recognise that the British Embassy or High Commission has any right to assist them or may not permit any assistance to be given. If the Foreign and Commonwealth Office considers that there is a special humanitarian reason to do so, it will consider offering assistance to dual nationals in the country of their other nationality. Forced marriage is one of those circumstances where such an exception may be made.

- Advise anyone facing forced marriage who holds dual nationality to travel under their British passport
- When asking a court to order the surrender of the passports of a person to prevent them from being taken abroad, ensure that this includes all passports if they are a dual national

If you have any queries about dual nationality contact the Forced Marriage Unit (see page 17)

Section 4: Service-specific information

'A woman's right to choose a spouse and enter freely into marriage is central to her life and her dignity and equality as a human being.' General Recommendation No.21, Comment Article 16 (1) (b), UN Convention on the Elimination of All Forms of Discrimination Against Women

15: Guidelines for health workers

16. Guidelines for school, college and university staff

17. Guidelines for police officers

18. Guidelines for children and families social workers

19. Guidelines for adult support and protection staff

20. Guidelines for local authority housing and homelessness staff

15. Guidelines for health workers⁶⁴

First, read the key practice messages on page 5.

See also section 2: information for all practitioners.

S came to the UK from Sudan following a forced marriage. When she arrived, she was prevented from leaving the house, discouraged from learning English and subjected to appalling abuse from her husband and extended family. One time after her husband had beaten her, she went to hospital and her husband went with her. Fortunately, the consultant she saw spoke her language. He asked the husband to leave but he refused. The consultant manufactured a reason for S to accompany him to another room to use a piece of equipment. He asked S if she was OK and she told him everything. In the middle of a busy clinic, he dropped everything, and phoned the police and social work. They collected her from the hospital and found her a place in a refuge. S believes the consultant saved her life.

Background

Most women experiencing abuse will, at some point, use health services for themselves or their children.

As a health worker, therefore, you are in an ideal position to support women who are in, or are threatened with, a forced marriage. The weight of cultural expectations, fear of bringing dishonour to the family, along with the social ostracism, harassment and violence which may ensue make it very difficult for them to come forward. For example, women may present to:

- Accident and emergency (A&E) departments, Genito-Urinary Medicine (GUM) or sexual health clinics with injuries consistent with rape or sexual violence or physical injury
- Dental surgeries with facial injuries consistent with domestic abuse
- Mental health services, addictions services, school nurses, health visitors, GPs with issues such as depression; self-harm; anorexia; substance misuse; or attempted suicide
- Maternity services and reproductive care as a result of forced pregnancy or miscarriage

⁶⁴ Based on NHS Scotland, 2009. Harmful Traditional Practices: what health workers need to know about gender-based violence

Health consequences of forced marriage

The health consequences are considerable and can include physical, emotional and psychological harm, which can be chronic, acute and long-term. Isolation is common. Women may be removed from education or from their social circle, be forbidden to work, or prevented from going out alone. As a result, they may be depressed, anxious and may self-harm. Studies have shown a significantly higher level of self-harm in young Asian women, some of which is attributed to lack of self-determination and the weight of expectations surrounding the concept of honour and concerns about marriage. There are reports of women committing suicide. Substance misuse, eating disorders, early and unwanted pregnancies are also common.

Identifying forced marriage

Women may present to health professionals with many of the same problems evident in women experiencing domestic abuse. This includes unexplained injuries, chronic pain, mental health problems such as depression, anxiety, eating disorders, self-harm, difficulties in pregnancy and so on. Being aware of the indicators and understanding the dynamics of domestic abuse can help you identify possible cases of forced marriage.

The NHS Scotland programme to implement routine enquiry⁶⁵ of domestic abuse across mental health, maternity, addictions, A&E, community nursing and sexual and reproductive health services may make disclosures of abuse more frequent but may not reveal forced marriage unless you ask a woman about her family life and whether there are restrictions at home. For example, asking whether she has friends or family who support her or whether she gets out much. See below for more on asking about abuse.

Other warning signs may include:

- A family history of older siblings marrying early. In these cases, their parents may think it is their duty to ensure that children are married soon after puberty in order to protect them from sex outside marriage
- Withdrawal from education, or for women with physical or learning disabilities, withdrawal from their social networks or day care
- A young woman being taken to the doctor to be examined to see if she is a virgin
- Possible presentation of symptoms associated with poisoning
- Less commonly, hair cut or shaved as punishment

⁶⁵ www.gbv.scot.nhs.uk/national-gender-based-violence-and-health-programme

How health workers can make a difference

In all cases you can improve women's safety and health by:

- Displaying information about forced marriage and details of helplines and organisations such as Women's Aid (this could be in private places, such as women's toilets)
- Being aware of the possibility of abuse
- Recognising signs and symptoms
- Broaching the subject sensitively
- Listening and making time
- Giving information and referring on to other services

To support disclosure and protect a woman at risk of, or in a forced marriage:

- Provide a private and confidential environment where she can speak without fear of being overheard
- See her on her own, even if she is accompanied. The only exception should be a professional interpreter
- Under no circumstances should a family member, friend or community leader be used to interpret, even if they provide assurances
- Treat her with respect and dignity. Understand the grave risks she may face in talking about abuse
- Recognise that she may fear contact with statutory agencies – she may have been told that she will be deported and/or that her children will be taken from her

Asking about abuse: routine and opportunistic enquiries

You should take a proactive role to establish whether forced marriage is an issue.

NHS Scotland has introduced routine enquiry into abuse within key settings. More information on this and how to ask about abuse is available at www.gbv.scot.nhs.uk and from your NHS Board's gender-based violence lead.

Asking, routinely or opportunistically, may encourage a woman to disclose. But even if she does not disclose, it shows that you understand the issues and it may give her confidence to disclose at a later date.

It is important that you set the context before asking such questions (see pages 43-47) and that your practice is consistent with routine enquiry above.

Suggested questions to ask are:

- 'Have you ever been afraid of your partner's or a family member's behaviour?'
- 'Are they verbally abusive?'
- 'Do you ever feel unsafe at home?'
- 'Has your partner or anyone else at home threatened you?'

Follow-on questions are:

- 'Have you ever been hurt by your partner or anyone else at home – perhaps slapped, kicked, punched or treated badly?'
- 'Have you ever been forced to have sex when you didn't want to?'

You can tailor these questions for relevance to your setting. For example, in a child and adolescent mental health setting, or any department where children and young people attend, the questions could focus on the family relationship. For example:

- 'Do you get on with your parents?'
- 'Apart from school, do you get out much?'
- 'Do you get to choose what you want to do and when, such as seeing friends?'

Depending on the answer, you could ask more in-depth questions, for example about gender roles, about the marriage of older siblings and the circumstances of these.

Your response

For a woman already in a forced marriage:

- Assess the impact on her health and ensure she receives appropriate treatment
- Assess her safety – is there an immediate or future safety risk?
- Discuss the options available to her (see page 49) and ensure she can get information in a language and format suitable to her needs
- Go over a safety plan with her (see page 60)
- Check her immigration status to assess the help available (see page 98). If she is from overseas, leaving the marriage and applying to remain in the UK

is complicated, and requires professional immigration advice. Refer to legal services which can help (see page 99)

- If she wishes, refer her to a support agency such as Women's Aid. Shakti and Hemat Gryffe Women's Aid have particular experience in this area (see page 146)
- Give her information about support agencies including the Domestic Abuse Helpline 0800 027 1234 (can she memorise this?)
- Refer her to the Forced Marriage Unit (see page 17) for specialist help and support
- Depending on the degree of freedom she has, it may not be possible for her to contact these services on her own or to follow aspects of the safety plan
- Discuss this with her and whether she needs more assistance to contact other agencies
- Is she in immediate danger – would an admission to hospital help to allow contact to be made with other agencies? Does she want you to contact the police?
- Offer her a further appointment. A health appointment may be one of the few occasions where she is allowed out of the house and having an appointment card can give her a legitimate excuse. This may provide the opportunity for getting further help
- Always document any disclosure, actions and follow up in patient notes but never in hand held records

If a woman is at risk of forced marriage

If you suspect, or are told by a woman, that she is being forced into marriage, try to establish the facts and the level of response required. Remember that she has limited options (see page 49).

Actions to take

There are some actions you should take and some you should avoid.

See page 65 for actions to take.

Do not:

- Involve her family – this can jeopardise her safety. They may punish her for seeking help; deny that she is being forced to marry; expedite any travel arrangements; and bring forward the marriage
- Visit the family to ask them whether they are intending to force a marriage or write to the family asking to discuss the allegation
- Use relatives, friends, community leaders and neighbours as interpreters, despite any reassurances from them
- Contact an Embassy or High Commission without her consent. She may not wish her country of origin to know of her whereabouts

If a woman is going overseas imminently

- If there is no opportunity to refer a woman to other services, and she fears she will be forced into marriage, gather as much information as possible in order to locate her (see page 68)
- Make sure she is aware of the implications of dual nationality (see page 99)
- Confirm that she has the details of the nearest Embassy/British High Commission and the Forced Marriage Unit (see page 17)

Child protection

If you are concerned for the safety of a young person under 16, or she discloses that she is being forced into marriage, or is concerned that this might be the case, you should discuss this with your child protection adviser and activate local child protection procedures. Similarly, if a woman discloses forced marriage you should ensure that your risk assessment includes risks to any children within the family.

Adult support and protection

While forced marriage is commonly an issue for young women, there have been reports of both disabled female and male adults being forced to marry (see page 130). In such circumstances, you should consider whether they are 'unable to safeguard their own interests through disability, mental disorder, illness or physical or mental infirmity, and are at risk of harm or self-harm, including neglect' as defined by the Adult Support and Protection (Scotland) Act 2007. For a victim who is incapable of consenting to marriage by reason of ⁶⁶mental disorder, the 2014 Act states that an 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).

⁶⁶ Mental disorder has the meaning given by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003

You should refer to local procedures and protocols on protecting adults and seek advice from your adult protection lead on whether more directive intervention is necessary.

Legal protection for victims

See section 3 for more information.

Two young women from an Asian community were referred by a local college to a health care team. The two women made it clear that contact could only be made at college and the nurses could never come to their homes. The women were very concerned that their families were planning to force them to marry overseas. On enquiry, both women said that they believed they would be drugged/sedated to the point where they would be incoherent in speech but be able to walk/mobile. They said that, in such circumstances, women were commonly 'circled by families within their families (groups of five or six women) and physically guided and led through airport security'. Both women had learning disabilities and both indicated that they did not want to leave Scotland or be married. The nurses contacted a specialist support agency with the consent of both women. A contact was established by the agency and the women. However, when the nursing staff next arranged to meet with the women at the college, the women were not there and had dropped out of college. The nurses were unable to contact either party at their home address.

Documenting and recording

Keep accurate and detailed records if forced marriage has occurred, or is threatened (see page 58).

Record the following:

- Nature of abuse, with details of any injuries and symptoms
- What the woman says and not what you think, although it is important to note any concerns or suspicions
- Outcome of risk assessment
- Any action taken or advised
- Information (as above) if there are concerns that a woman may be taken overseas or may 'disappear'

Evidence

The information you record may be evidence, for example in a future court case or to help her apply for the domestic violence concession (see page 99). A health professional can help her by providing evidence in the form of:

- A medical report from a hospital doctor confirming that she has injuries consistent with being a victim of domestic abuse
- A letter from a GP who has examined her and is satisfied that she has injuries consistent with assault/her version of events

Sharing information

- You may need to share information about a particular case. It may be required by law or it may be necessary to share information with support agencies to make sure that a woman and any children are safe and properly supported. Part 4 of the Children and Young People (Scotland) Act 2014 ensures that all children and young people have a Named Person provided by the local authority with a duty to promote, support and safeguard the child's wellbeing. See pages 51-54 for further information on data protection, information sharing and the Named Person
- Get the woman's permission before you pass on information and seek advice if you are in any doubt. However, in cases where there are concerns for a child under child protection guidelines or adult under adult support and protection guidelines, this would override the need for consent
- It may be safer to share information than keep it confidential. However, in making this decision you should fully consider the risks of sharing as opposed to not sharing, and evaluate the implications of that decision
- Be careful not to divulge confidential information by accident, for example, if you are approached by a family friend or someone with standing in the community (such as an MSP, MP or councillor) with a plausible reason for knowing where the woman is staying

Follow up

Your intervention will depend on the setting you work in. You may only see the woman once, for example, in an emergency setting. If possible, it is helpful to offer a follow up appointment. Record that the reason for this appointment is specific, and ensure your manager knows you have concerns. Always consider the woman's safety and how any approach you make might affect this (see page 60).

16. Guidelines for school, college and university staff

This chapter focuses on responding to young people (including those over 18) in educational settings. The specific actions you take will depend on the particular circumstances of the case and whether you work in a school, FE college, university or other formal or informal education setting. The term 'young person' in this section refers to school pupils and college/university students.

First, read the key practice messages on page 5.

See also section 2: information for all practitioners.

Background

Young women who are, or fear they may be, forced to marry are frequently withdrawn from education, restricting their educational and personal development. They may feel unable to go against the wishes of their parents and, consequently, may suffer emotionally, often leading to depression and self-harm. These factors can contribute to impaired social development, limited career and educational opportunities, financial dependence and lifestyle restrictions.

X was 17 when she told her school guidance teacher that she was to be forced into marriage overseas following a visit to her family there. While with her family overseas she had agreed to be married, but when she got back to Scotland she changed her mind. A Sikh, she was secretly conducting a relationship (mainly over the internet) with a Sikh man she had met through family but who lived elsewhere in the UK. Her parents found out about the relationship and confronted her. They held her at home, subjecting her to verbal and physical abuse until she consented to the overseas marriage. Her guidance teacher, Shakti Women's Aid, social work and the police worked closely together. A subsequent police investigation resulted in the parents being charged with assault, breach of the peace and threats. This is an example of the effectiveness of the Named Person approach (see page 113).

Identifying forced marriage

Young people who fear they may be forced to marry often come to the attention of, or turn to, a teacher, lecturer or other member of staff before seeking help from the police or others. Sometimes their friends tell staff.

You may notice the following:

- A young person appears anxious, depressed and emotionally withdrawn with low self-esteem. She may have mental health or eating disorders or be self-harming. Sometimes, young people come to the attention of the police because of shoplifting or taking drugs or alcohol. These issues may be more apparent in periods leading up to the holiday season

- Sudden decline in a young person's performance, aspirations or motivation. They may feel studying is pointless if they are to be forced to marry and unable to continue with their education
- Change in dress, that is from wearing western clothes to 'traditional' style clothes or even covering the head
- Coming to school/college but not attending lessons. She may be living in virtual imprisonment, subject to excessive restrictions and control at home. She may not be allowed to attend any extra-curricular or after school activities and may be accompanied to and from school/college, and even during lunch breaks. So, being in school may be the only 'free' time she has for the usual adolescent activities that her peers pursue at weekends with their friends
- She may stop coming to school/college. Some young women have been locked inside and not allowed to communicate with anyone outside
- Her punctuality may decline, especially past compulsory education age, which may be the result of having to 'negotiate' her way out of the house. Young women may be given very little time to get to school so they do not have time to meet a boyfriend or talk to friends. Sometimes, older siblings (usually brothers) and cousins keep a close eye on girls to make sure that they do not meet anyone or talk to friends
- Homework/assignments may be incomplete or appear rushed. This may be the result of being actively discouraged by family members. They may do their work late at night, which frequently shows in class through lethargy, inability to concentrate and general appearance of tiredness
- Conflict between the young person and her parents about being allowed to continue with education or exam commitments
- Family arguments about whether the young person can apply to go to college or university, and the distance of the college or university from the family home
- Family history of older siblings leaving education early and marrying early. Some families think it is their duty to ensure that children are married soon after puberty in order to protect them from sex outside marriage. In these cases, there may be a history of considerable absence authorised by the young person's parents. These absences may be for sickness, or extended family holidays overseas often interrupting the school term

A large proportion of forced marriages occur during the summer holidays. Young people may be taken abroad on what they think is a holiday to visit family overseas, but, in fact a marriage is planned.

Signs to look out for around holiday times

- Young person anxious about or fearing holidays
- Surveillance of young person by siblings or cousins at school or being met at the end of the day
- Young person discouraged or prevented from going on to college or university
- Persistent absence; requests for extended leave
- Decline in behaviour, performance or punctuality
- Not being allowed to attend extra-curricular activities
- Sudden announcement of engagement to a stranger

Note

Some of the above indicators (for example anxiety around holiday times and significant levels of surveillance from family members) might be associated with families arranging for young women to be circumcised in the UK or overseas ('female genital mutilation' (FGM or 'cutting')). This is against the law (see page 37).

How education staff can make a difference

See also school context below and college/university context below.

You can play a crucial role in identifying and protecting young people at risk of forced marriage and you should be vigilant, especially in the run up to the summer holidays. If the warning signs are picked up early enough, you may be able to intervene to prevent a forced marriage from happening. But you need to know how to handle the situation in order to avoid putting the victim at further risk.

While it is important to understand the motives that drive families to force young people to marry (see page 32), there is no justification for denying young people the right to choose a partner and enter freely into marriage.

Young people at risk of forced marriage need a sensitive and urgent response. You should reassure any young person in this situation that your establishment will provide as much support as possible. Because of the very serious risks to victims, you may have to vary your standard practice in involving families and respecting 'parents' rights'. This is a challenge. Refer to your inter-agency child protection guidance and local authority lead for forced marriage.

C was always able and keen at school but, when she was 15, turning 16, her behaviour and attitude changed and deteriorated further as the summer holidays approached. She missed several exams and, at the start of the autumn term, she did not turn up at school at all. One of her friends told her guidance teacher that she feared a possible forced marriage, and that C had been left overseas by her family. The school contacted the police and social work who also contacted the Forced Marriage Unit. C was finally located and repatriated to the UK. She had to re-sit her exams the following year but is doing well and living in foster care.

Confidentiality and information sharing

Victims or potential victims of forced marriage who disclose may be exposing themselves to serious harm and even death. You must ensure highest standards of confidentiality (according to your service protocols specifically on forced marriage) and explain any limits to confidentiality (for example, if there is a risk of immediate harm).

Any disclosure of information, should, ideally, be with consent. The victim should be involved in the decision-making process and retain as much control as possible over disclosures of information.

The victim's private business should be treated with absolute discretion, and any information passed on a 'need to know' basis (see page 51), for example to the police for an investigation and any records should be stored securely with restricted access. Remember that family networks may extend into your place of work.

Documenting and recording

See page 58

Records must be kept secure in accordance with the Data Protection Act (see page 52). Members of the victim's family or community may work in your establishment.

Remember:

- A young person may not wish to be referred to a social worker, police officer or other professional from their own community or who has a personal connection to their community
- You must not contact the family or other community members as this may endanger the young person and expedite any marriage arrangements
- You must not give information to a third party such as a family member or other professional such as a GP, MSP, MP or councillor, no matter how plausible or well intentioned they are
- You or the young person can contact the Forced Marriage Unit for advice or assistance at any time
- There are services which can help young people in these circumstances (see section 5)

Legal protection for victims

See section 3 for more information.

School context

All teachers have a remit to ensure the wellbeing of children and young people in education. See more on education and the links to health and wellbeing at: www.educationscotland.gov.uk/resources/m/makingthelinks.asp

*Getting it right for every child and young person (GIRFEC)*⁶⁷ is a national programme which aims to improve the wellbeing of all children and young people.

Through national and local policy and services, the GIRFEC approach:

- Puts the best interests of the child at the heart of decision making
- Takes a holistic approach to the wellbeing of a child
- Works with children, young people and their families on ways to improve wellbeing
- Advocates preventative work and early intervention to support children, young people and their families
- Believes professionals must work together in the best interests of the child

The approach requires a lead professional who co-ordinates multi-agency planning and makes sure that the different services provide a network of support around a child in a seamless, timely and proportionate way.

All children have a Named Person in health or education (if they are of school age) who is responsible for making sure that a child has the right help at the right time to support their development and wellbeing. Teachers are, therefore, key to the Named Person response central to the *Getting it right* approach. *Getting it right for every child practice briefing 3*⁶⁸ provides information on identifying concerns and responding using the GIRFEC approach.

The Children and Young People (Scotland) Act 2014 is rooted in the GIRFEC approach, and puts various key initiatives into statute, including the Named Person and the single 'Child's Plan'. Other Scottish Government initiatives underpinned by GIRFEC principles include the Children's Hearing system; the Early Years Collaborative; Early and Effective Intervention/Whole Systems; and the Family Nurse Partnership.

Under Curriculum for Excellence⁶⁹, teachers are responsible for promoting a climate in which children and young people feel safe and secure and for encouraging open, positive, supportive relationships across the school community, so that children and

⁶⁷ www.scotland.gov.uk/Topics/People/Young-People/gettingitright

⁶⁸ <http://www.scotland.gov.uk/Topics/People/Young-People/gettingitright/publications/practice-briefings>

⁶⁹ Curriculum for Excellence:

www.ltscotland.org.uk/understandingthecurriculum/whatiscurriculumforexcellence/index.asp

young people feel that they are listened to, and are secure in their ability to discuss sensitive aspects of their lives. Teachers also have a role in equipping children with the knowledge, skills and understanding they need to keep themselves and others safe. This could include offering advice and guidance on issues such as forced marriage. Other responsibilities include understanding child protection policies and knowing the steps to take in any given situation.

The Named Person under the Children and Young People (Scotland) Act 2014 is usually the responsibility of education departments for children of school age.

The needs of all young people attending school should also be considered within the framework of the Education (Additional Support for Learning) (Scotland) Act 2004 (amended 2009)⁷⁰. Staff in all establishments and services should consider whether or not any young person who is, or fears they may be, forced to marry has additional support needs related to their education and plan to meet these in line with child protection guidance.

The needs of young people with a disability who are in education should be considered. A young person who lacks the capacity to consent to a marriage is particularly at risk. If a young person has a physical or learning disability, the family may think that marriage will provide them with a carer/financial security. Also by 'marrying off' the person, the family ensures that the marriage prospects of siblings are not tarnished by having the victim remain unmarried. This does not mean that every young person with a disability is at risk; rather it is a possible risk factor.

Included, Engaged and Involved: Part 1 Attendance in Scottish Schools⁷¹ encourages school staff to consider the circumstances which may lead to a change in a pupil's pattern of attendance and behaviour. You should be aware of the link between changed behaviour and pastoral and child protection concerns and consider these holistically. You should address changed behaviour, low-level or serious, or child protection concerns, such as self-harm using the behavioural or child protection measures set out in your school and local authority policy.

The National Guidance for Child Protection in Scotland (2014)⁷² states that education practitioners, school staff and staff in other learning settings play a crucial role in supporting and protecting children as well as developing their well-being. Teachers are likely to have the greatest level of day-to-day contact with children and so are well placed to observe physical and psychological changes in a child, which could indicate abuse, and to contribute to the assessment of vulnerable children. Education staff should share information about any concerns with the social work service or the police at an early stage using your established reporting mechanisms. You may also be asked to help with investigations into alleged or suspected abuse

⁷⁰ www.legislation.gov.uk/asp/2009/7/contents

⁷¹ <http://www.scotland.gov.uk/publications/2007/12/05100056/0>

⁷² www.scotland.gov.uk/Publications/2014/05/3052

or neglect. Children and young people often see teachers as a trusted source of help and support, and if the concerns do not constitute a child protection concern, the teacher may have a supporting role in developing a Child's Plan.

Education services work with a range of partner agencies, including youth work and community learning and development to provide services and support to meet the needs of a child or young person. Education staff can support a child through ongoing planning and interventions, including participation in Child Protection Case Conferences and core groups.

Your response

Teaching staff have an important role in prevention work and creating an inclusive environment where young people feel comfortable and safe to discuss issues. Depending on your area of the curriculum or responsibility, forced marriage and wider issues of violence against women and gender-based violence could be introduced for example, in relationships, sexual health and parenthood (RSHP) education, Drama and English.

You are also in an ideal position to identify and respond to a victim's needs at an early stage. It is important that you do so without creating additional risks. These are explained in section 5.

You must be honest with young people who approach you and tell them about the limits to confidentiality. Some young people will not know of your responsibilities to act if there is any risk of harm and may simply be looking for 'someone to talk to'. You must tell the pupil this outright and as close to the start of the conversation as possible.

Using the *Getting it right* approach, you should follow your organisation's policies and protocols, for example for child protection, adult protection, absence from school and so on. Be aware of the particular risks to victims associated with forced marriage and ensure that the young person's safety is the over-riding factor. This means that it is not appropriate to engage with the family or wider community about your concerns. This could place a young person in further danger and expedite any arrangements.

For young people who are 16 years or older and still at school, there are issues about their rights as 'adults' and the level of risk to their life or wellbeing. There are various options for young people in these circumstances (see section 3) and they should be given as much control as possible. Whatever they decide to do (and this includes doing nothing) they may require support over the very long term. For example, leaving home and family because of forced marriage is a very hard decision which may have significant and enduring consequences.

If a young person asks you for help

- Explain to the young person that forced marriage is not legal (see section 3) and that there are agencies which can help (see page 145)
- Explain that there are legal remedies available to support young people in this situation (see section 3)
- Refer immediately to your school/local authority procedures
- Depending on the situation, the level of concern may be such that it becomes a child protection or adult protection issue and you should follow the appropriate procedures
- Seek advice from your line manager/the local authority lead officer for forced marriage
- Record all steps you have taken

If a young person stops attending school or does not return from a 'holiday'

If a young person stops attending school, it is vital that schools deal with non-attendance sensitively in order to minimise risks. You should refer immediately to children missing from education protocols within your local authority.

If you suspect/are concerned that a young person may be forced to marry

- Refer to your school/local authority procedures
- Seek advice from the local authority lead officer for forced marriage
- Discuss with the Named Person (*Getting it right*)
- Record all steps you have taken

If the young person is going overseas imminently

- Note down any information you can (see page 68). There may not be another opportunity if she goes overseas. This information may help the Forced Marriage Unit to locate the young person and assist to repatriate them
- Seek advice from the local authority lead officer for forced marriage
- Record all steps you have taken

If a young person has already been forced to marry

- Refer to your school/local authority child protection procedures
- Seek advice from the local authority lead officer for forced marriage
- Record all steps you have taken

Safety alert

- Treat what a young person tells you very seriously – they may need immediate protection
- Do not approach the young person's family or those with influence within the community, without the express consent of the young person, as this will alert them to your concerns and may place the young person in danger
- Do not attempt to mediate with the family as this is dangerous

College and university context

Your approach may differ according to the specific circumstances of the case, for example whether it involves a British national in danger of forced marriage or a student from overseas coming to a UK university who is in danger of forced marriage back home or in the UK.

Note that it is illegal to give immigration advice unless you are authorised to do so (see page 98). If immigration advice is required you should refer to an authorised adviser.

If a student approaches you for help:

- Explain possible options to the victim (see page 49)
- Provide information about sources of help and support (see page 146) and make a referral for the victim if she wants this
- Explain that there are legal remedies available to support young people in this situation (see page section 3)
- If you need information or advice, contact the Forced Marriage Unit (see page 17)

If she is going overseas imminently or you are concerned that she may be forced to marry:

- Try to gather as much information as possible (see page 68). There may not be another opportunity if she goes overseas. This information may help the Forced Marriage Unit to locate the young person and assist to repatriate them
- Follow the 'one chance' steps set out on page 9

- If she is a British national, give her the contact details of the nearest British Embassy or High Commission to where she is going (see page 145)
- If she has dual nationality, advise her to travel on her British passport if possible (see page 99)
- Advise her to leave photocopies of her passport and birth certificate with a trusted friend or agency
- If she is not a British national, advise her to contact the Forced Marriage Unit (see page 17). It may be able to provide details of reliable non-governmental organisations overseas and the details of the relevant embassy
- Explain the difficulties that she may face when overseas (see page 38)
- Explain the options available to her (see page 49)

Safety alert

If a friend is involved in helping her, also consider the risks to this friend and talk this through with them.

17. Guidelines for police officers

First, read the key practice messages on page 5.

See also section 2: information for all practitioners.

Police response to forced marriage incidents

Police Scotland treats all incidents of forced marriage as high priority.

The primary objective of the police is to protect the individual involved and prevent any future risk of harm to the victim/potential victim.

Every report of forced marriage receives a consistent response. The police thoroughly investigate every report of forced marriage, and offer every person (adult or child) who is a victim/potential victim protection, safety advice and referral to a relevant support service.

The immediate response to a report of forced marriage is key to protecting victims and children. All police officers and police staff realise that such incidents may come to the attention of the police in various ways and guises.

Action to take

You should complete the Honour Based Violence (including Forced Marriage) Risk Assessment and Protection Plan form at the earliest opportunity.

You must not attempt to mediate or reconcile in such situations as they may unwittingly increase an individual's vulnerability and place them in danger.

You should not approach community or religious leaders or the individual's family for assistance.

If the victim/potential victim is a `child`, you must adhere to local child protection procedures or guidelines and liaise closely with social work departments and the Children's Reporter over protective statutory interventions. Officers should refer to the Police Scotland Child Protection Standard Operating Procedure for further instruction/guidance.

If the victim/potential victim may be the subject of an adult protection concern, officers should refer to the Police Scotland Adult Support and Protection Standard Operating Procedure for further instruction/guidance.

The Detective Superintendent within Specialist Crime Division Public Protection is the strategic lead for forced marriage. The national HBV coordinator within Public Protection supports this role.

Divisional Domestic Abuse and Public Protection Unit officers have specialist knowledge of forced marriage and are responsible for investigating reported cases.

Officers should refer to the Honour Based Violence, Forced Marriage and Female Genital Mutilation Standard Operating Procedure and the Joint Guidance between the Police Service of Scotland and COPFS on the Investigation, Reporting and Prosecution of Offences of Forced Marriage.

Further guidance on forced marriage is available on the Police Scotland intranet.

18. Guidelines for children and families social workers

This chapter focuses on children who are in or at risk of forced marriage. The specific actions you take will depend on the particular circumstances of the case.

First, read the key practice messages on page 5.

See also section 2: information for all practitioners.

When R, a British national, was 10, her father breached a court order and, without her mother's permission, took her and her four siblings to Pakistan. She pleaded with her father to be allowed to return home but he refused to let her and told her she was engaged to her cousin. He also told her that her mother didn't want her back in the UK. Finally, when she was 15, she managed to contact her mother using a secret mobile phone and asked her mother to help her. Things got worse after that. Her mobile phone was found and confiscated. Her father beat her because she had 'looked at a boy'. Then she was told she was going to Afghanistan to meet her prospective husband. She managed to get a message to her mother who contacted the Forced Marriage Unit. In the UK, court orders were obtained against her father. She was rescued from her father's home by the British High Commission and returned to her mother in the UK.

During the five years in Pakistan, she was regularly beaten. She had also been confined to the house and not allowed to go to school. She is still frightened that her father will come for her but she is now getting her life back on track. Her two older brothers and sister were not so 'lucky' and were forced to marry at 15 or 16.

Background

The consequences of forced marriage can be devastating to children and young people affected. They may be subject to extreme abuse and 'honour-based' violence if they resist their families. They may become estranged from their families and wider communities and lose out on educational opportunities. Rates of suicide and self-harm are high.

How social workers can make a difference

The National Child Protection Guidelines (2014)⁷³ state:

'Local authorities have a duty to support and safeguard the wellbeing of children in need in their area, including disabled children, and, insofar as is consistent with that duty, to promote the upbringing of children by their families by providing a range and level of services appropriate to children's needs. When the local authority receives

⁷³ National Child Protection Guidelines (2014): www.scotland.gov.uk/Publications/2014/05/3052

information which suggests that a child may be in need of compulsory measures of supervision, social work services will make enquiries and give the Children's Reporter any information they have about the child.'

The Scottish Government Role of the Registered Social Worker in Statutory Interventions: Guidance for Local Authorities 2010 states that, 'where children are in need of protection and/or in danger of serious exploitation or significant harm, a registered social worker will be accountable for:

- Carrying out enquiries and making recommendations where necessary as to whether or not the child or young person should be the subject of compulsory protection measures
- Implementing the social work component of a risk management plan and taking appropriate action where there is concern that a multi-agency plan is not being actioned and
- Making recommendations to a children's hearing or court as to whether the child should be accommodated away from home'

Identifying forced marriage

Indicators which might alert you that a young person is facing forced marriage include:

Education

- Absence and persistent absence from education
- Request for extended leave of absence and failure to return from visits to country of origin
- Decline in behaviour, engagement, performance or punctuality
- Being withdrawn from school by those with parental responsibility
- Being prevented from attending extra-curricular activities
- Being discouraged or prevented from going on to further/higher education

Health

- Self-harm
- Attempted suicide
- Depression
- Eating disorders
- Accompanied to doctors or clinics and prevented from speaking to health practitioner in confidence
- Female genital mutilation

Police

- Reports of domestic abuse, harassment or breaches of the peace at the family home
- Threats to kill and attempts to kill or harm

- Truancy or persistent absence from school

Your response

You should be aware of the issues surrounding forced marriage, the dangers victims face and the help which can be offered to victims.

Under Section 22(1) of the Children (Scotland) Act 1995⁷⁴, the local authority has a duty to safeguard and promote the welfare of children in need in its area, and, as far as is consistent with that duty, to promote the upbringing of such children by their families by providing a level of services appropriate to those children's needs.

Under Section 60 of the Children's Hearings (Scotland) Act 2011, the local authority has a duty to make enquiries into the circumstances of any child who may be in need of a compulsory supervision order and to refer the child to the Reporter if the inquiry indicates a compulsory supervision order may be necessary.

The local authority has a duty to make enquiries into allegations of abuse or neglect against a child under section 60 of the Children's Hearings (Scotland) Act 2011.

Forced marriage is child abuse and can put children and young people at risk of physical, emotional and sexual abuse. Although you need to be sensitive to cultural and racial differences, you have an overriding duty to identify children who are likely to suffer significant harm, and to invoke the necessary child protection procedures.

The personal safety of the child or young person must come first.

The National Guidance for Child Protection (2014)⁷⁵ and the *Getting it right*⁷⁶ approach will direct your work in ensuring that children and young people are safe and supported within a multi-agency approach. *Getting it right* Integrated Assessment Framework (paragraphs 93-94) should enable risk factors to be identified and shared to enable full assessment of risk. A child's planning meeting will enable a wide range of practitioners to provide information. The Named Person will play a vital part in this process.

Cases of honour-based violence/forced marriage can involve complex and sensitive issues, and you must take care to ensure that interventions do not place the child or young person in further danger. The usual procedures for including parents, where possible, in the child protection process need to be set aside and noted as inappropriate in the records because this could increase the risk to a child.

Each Child Protection Committee (CPC) has local inter-agency child protection policy, procedure, protocols and guidelines for helping children and young people

⁷⁴ Children (Scotland) Act 1995: www.legislation.gov.uk/ukpga/1995/36/contents

⁷⁵ www.scotland.gov.uk/Publications/2014/05/3052

⁷⁶ www.scotland.gov.uk/Topics/People/Young-People/gettingitright

who are facing abuse. Your social work department should have multi-agency policies and procedures on child protection and domestic abuse which include handling cases involving forced marriage. Your local authority also has a designated lead for forced marriage.

If there is any suggestion of risk of forced marriage, you should not mediate with or involve the family as this can place a child or young person in danger. This includes visiting or writing to the family to ask them about their intentions or discuss a child's allegations. Family group conferences are not appropriate.

Legal context and remedies

See section 3 for more information.

There are various legal remedies available to protect a child or young person who is at risk of or in a forced marriage. These remedies vary according to the individual circumstances and whether the child or young person is in the UK or overseas, a British national or not. These are explained in full in section 3.

Local authorities can make third party applications for Forced Marriage Protection Orders in their capacity as Relevant Third Parties (see page 76).

When L's father found out about her boyfriend, he was so angry that he cut off her hair. He told her that having a boyfriend was against their culture. She would have to marry the man he chose and have a virginity test. L was so scared that she took an overdose. Fortunately she recovered in hospital.

Interpreting

See page 45.

Arrange for an authorised interpreter who speaks the dialect of the child or young person. If necessary, obtain consent from the child or young person through Language Line (see page 45). Check any preferences about the sex of the interpreter.

Confidentiality and information sharing

See page 51.

Recording and storing information

Safety alert

- Treat what a young person tells you very seriously – they may need immediate protection
- Do not approach the young person's family or those with influence within the community, without the express consent of the young person, as this will alert them to your concerns and may place the young person in danger
- Do not attempt to mediate with the family as this is dangerous

In all cases when a child is involved:

1. Refer to local inter-agency child protection procedures/guidance and implement local procedures. Do not involve the victim's family or community as this may cause additional risks
2. Refer to the national child protection guidelines⁷⁷
3. Gather information as carefully and discretely as possible (see page 68)
4. Refer to local and national child protection information sharing protocols
5. Seek advice from your local authority forced marriage lead officer and legal services department
6. Discuss the case with the Forced Marriage Unit (for professional immigration advice)
7. Always ensure the child or young person is dealt with in a culturally sensitive way and their wishes are recognised and respected

Do not:

- Go directly to the victim's family, friends or those with influence within the community, as this will alert them to the enquiries and may place the victim in further danger
- Make direct contact with the British Embassy, High Commission or overseas police without first liaising with the Forced Marriage Unit

If a child or young person fears they may be forced to marry

A child or young person may approach you directly because they are going on a 'family holiday' overseas and are concerned as they suspect that they are to be forced to marry. You should take any such concerns seriously. (But do not assume that every young person going on holiday overseas is at risk of forced marriage.)

If the risk of forced marriage is immediate, you may need to take emergency action to remove the child or young person from the home in order to protect them. You can take emergency measures under the Childrens Hearings (Scotland) Act 2011⁷⁸.

⁷⁷ National Guidance for Child Protection in Scotland (2014):
www.scotland.gov.uk/Publications/2014/05/3052

⁷⁸ www.legislation.gov.uk/asp/2011/1/contents

If a third party reports that a child or young person has been taken overseas for the purpose of a forced marriage

A concerned friend, relative or practitioner may report that a child or young person is missing, taken overseas. Confidentiality and discretion are vitally important. Do not immediately contact an overseas organisation to make enquiries. If, through your actions, the family becomes aware that enquiries are being made, they may move the child or young person to another location or expedite the marriage.

- Follow actions 1 to 7 above and
- Check existing missing persons' reports
- Obtain details of, and maintain contact with, the third party in case the child or young person contacts them whilst overseas or on their return
- Reassure the third party that if the child or young person who is being held overseas is a British National and wishes to return to the UK, the Foreign & Commonwealth Office can try to repatriate them as soon as possible (see below).

Once a young person has left the country, the legal options open to police, social services, other agencies or another person to recover the young person and bring them back to the UK are limited.

Do not:

- Speak to the child or young person on the telephone in order to find out if they are being held against their will. They may not be able to speak freely, may be under threat and/or it may be another person (impersonator) on the telephone
- Disclose information to the overseas police or any other overseas organisation that could place the child or young person in further danger e.g. disclosure about previous/current boyfriends or partners in the UK

If a child or young person has already been forced to marry

This might come to your attention for various reasons. For example, a child or young person may approach you or the police because they are concerned that they may need to act as a sponsor for an overseas spouse's immigration to the UK. You should reassure the child or young person that they cannot act as a sponsor until they are 18. However, confronting the family may be extremely risky for the child or young person.

- See points 1 to 7 above and:
- Tell her about the support available to survivors of domestic abuse and forced marriage (see page 146) and refer if appropriate
- Provide immediate safety planning advice (including how to safely keep in contact)

If a child or young person is repatriated to the UK from overseas

The Forced Marriage Unit may ask social workers for assistance when a child or young person is being repatriated to the UK from overseas. The child or young

person may be extremely traumatised. They may have been held against their will for many months. They may have been emotionally and physically abused. Young women may have been raped, sometimes repeatedly or until they become pregnant. They may have risked their life to escape and their family may go to considerable lengths to find them. This makes all victims particularly vulnerable when they return to the UK.

When a child or young person who is a British national arrives at, or contacts, a British Embassy or High Commission, the Foreign & Commonwealth Office can try to repatriate them as soon as possible. Because of the urgency of the situation, the Foreign & Commonwealth Office may not be able to give you much notice of the young person's arrival.

The Foreign & Commonwealth Office is obliged to explore all options for funding the cost of repatriation. For victims who are children or young people, this means asking the young person themselves, a trusted friend or children and family social work services or a school or college if they are able to meet the costs of repatriation. However, this should never delay the process of getting the child or young person to safety.

- Follow points 1 to 7 above and
- Arrange for someone to meet the child or young person at the airport e.g. a social worker, police officer
- Ensure that arrangements are put in place to ensure safe accommodation of a repatriated child or young person while legal remedies and action are considered

Remember:

- Arranging a foster family from the same community as the child or young person may not be appropriate and may place the child or young person at risk of harm
- A child or young person might wish, and you should in any case actively encourage them, to be fostered outside the immediate geographical area. You should liaise with colleagues to provide safe accommodation
- The child or young person may need practical help such as emergency money, clothes and toiletries. Under the Social Work (Scotland) Act 1968, the local authority may be required to make a payment for a child or young person in need, including the cost of accommodation. The local authority within which the child or young person had their last permanent residence should provide funding. For children under 18, access to accommodation depends on the circumstances of each case and applicable legislation

Safety alert

You may be placed under pressure from relatives, councillors, MSPs, MPs, and those with influence within the community to say where the young person has gone. Do not divulge this information. This may place the child or young person at risk of harm.

Family and community networks may extend into your own organisation. Be very careful about restricting access to information and records.

If a child spouse has come to the UK from overseas

A spouse who is a child or young person may come to the UK from overseas. They may have run away, may not speak English and may be traumatised as a result of physical, emotional and sexual abuse.

They may come to your attention through a domestic abuse, missing persons or child protection route.

A child or young person who is married (whether or not they are a British national) is entitled to support and should be regarded as an unaccompanied child. This means that the local authority has certain duties to provide support and accommodation for them.

- Follow points 1 to 7 above and
- Arrange for someone to meet the child or young person at the airport e.g. a social worker, police officer
- Organise safe and secure accommodation
- Pay particular attention to using interpreters for separated children and accessing specialist legal advice (see below)

Separated children are unaccompanied minors. Local authorities are responsible for assessing their needs and offering support. Separated children are often vulnerable because of their unaccompanied status and to their experiences in their home countries and during their journey to the UK. If child protection concerns arise, they should be addressed in the same way as if the child is a UK national.

Immigration and asylum issues relating to unaccompanied children are a highly specialised aspect of the legislative framework. The potential for exploitation and vulnerability is high and it is important that specialist legal advice is sought, even in situations that appear straightforward. There are complex and contested processes of age-testing that seek to clarify the ages of unaccompanied children arriving in this country without identifiable information and paperwork. The Scottish Refugee Council (see page 147) can provide initial support and information to help guide workers through these processes.

If the child or young person has a disability

- Follow points 1 to 7 above

Children and young people with mental and physical disabilities are sometimes forced to marry. Families may genuinely believe that finding a spouse to care for their disabled son/daughter is acceptable. They may try to hide, play down or make light of a child or young person's disability in order to encourage the marriage. Such young people are particularly vulnerable because they may depend on their families

for care; and they may have communication difficulties and fewer opportunities to tell anyone outside the family about what is happening to them. For more information see the *National Guidance for Child Protection in Scotland 2014: Additional notes for practitioners: protecting disabled children from abuse and neglect*⁷⁹.

Disabled children are defined as a child in need under section 93(4) of the Children (Scotland) Act 1995⁸⁰.

⁷⁹ www.scotland.gov.uk/Publications/2014/05/3076/0

⁸⁰ Children (Scotland) Act 1995: www.legislation.gov.uk/ukpga/1995/36/contents

19. Guidelines for adult support and protection staff

This chapter focuses on adults who, because of an illness, disability or health condition, are unable to protect themselves from harm. The specific actions you take will depend on the particular circumstances of the case.

First, read the key practice messages on page 5.

See also Forced Marriage and Learning Disabilities:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/35533/fm-disability-guidelines.pdf

See also section 2: information for all practitioners.

D is 35 and has a learning disability. The marriage came to the attention of social workers after it had taken place. He lives with his mother who is in her 80s and she told his social worker that she wanted him to marry a woman who was coming to visit them from abroad. D said that he did not want to get married but his mother told him that no-one else would look after him when she died. He was extremely anxious about being married as he worried about what being a husband entailed. D's wife came to the UK to marry him but did not know he had a learning disability and left him two weeks after the marriage. This has had a profound effect on D's self-esteem as he thinks it was his fault that the marriage was a failure. He has become very withdrawn and will no longer attend the day centre where he had a lot of friends. Social work is not aware of long-term plans for his care because D does not want to engage with them.

Background

Under Section 122(2)⁸¹ of the Anti-Social Behaviour Crime and Policing Act 2014, a victim who is incapable of consenting to marriage by reason of mental disorder⁸², the offence under subsection (1) 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).

⁸¹ Section 122 (2) of the Anti-Social Behaviour Crime and Policing Act 2014 refers to a victim who is incapable of consenting to marriage by reason of mental disorder. Section 122 (5) has the meaning given by section 328 of the Mental Health (care and Treatment) (Scotland) Act 2003.

⁸² 'Mental disorder' has the meaning given by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003. <http://www.legislation.gov.uk/asp/2003/13/contents>

Provisions of the Adult Support and Protection (Scotland) Act 2007

The Adult Support and Protection (Scotland) Act 2007⁸³ (2007 Act) defines 'adults at risk' as adults (16+) who:

- Are unable to safeguard their own well-being, property, rights or other interests **and**
- Are at risk of harm **and**
- Because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected

This is known as the '3 point test'. The presence of a particular condition does not automatically mean an adult is an 'adult at risk'. Someone could have a disability but be able to safeguard their well-being. It is the whole of an adult's particular circumstances which can combine to make them more vulnerable to harm than others.

The 2007 Act:

- Places a duty on councils to make inquiries and investigations to establish whether or not further action is required to stop or prevent harm occurring
- Places a duty on specified organisations to co-operate in investigating suspected or actual harm
- Introduces a range of protection orders including assessment orders, removal orders and banning orders and
- Provides a legislative framework for the establishment of adult protection committees across Scotland

Forced marriage, like domestic abuse or other forms of violence against women/gender-based violence, is a form of harm which may be experienced by adults at risk. If an adult is known or believed to be an adult at risk of harm and in need of protection, as per the 3-point test, the local authority has a duty under section 4 of the 2007 Act to inquire into their well-being and to take action to prevent or stop the harm from occurring and to support the adult. Other agencies named in the 2007 Act are obliged to cooperate with a local authority in carrying out inquiries. A multi-agency approach is central to adult protection, and other public bodies have a key role in reporting cases of possible harm to the local authority social work department.

Local authority responsibilities

The 2007 Act requires each local authority to establish an adult protection committee for its area. These have various functions including keeping under review the

⁸³ Adult Support and Protection (Scotland) Act 2007: www.legislation.gov.uk/asp/2007/10/contents

procedures and practices of the public bodies which have duties and responsibilities under the 2007 Act. Adult protection committees are established on a multi-agency basis and must include representatives for the local authority, health board and police.

Each multi-agency adult protection committee and all local authorities in Scotland have local adult support and protection procedures which provide guidance for staff within the partnership agencies. Public sector, voluntary and private organisations also have a duty to refer adults at risk and report situations of harm to the local authority.

In some instances, forced marriage may be an adult protection issue. Adult protection committees should ensure, through training, that staff are aware of the issues of forced marriage and that local adult protection procedures include practice guidance on forced marriages involving adults at risk of harm.

As a practitioner, you should be aware of the issues surrounding forced marriage, the dangers victims face and the help which can be offered to victims who approach the local authority for assistance or who come to the local authority's attention.

When there are concerns that an identified adult at risk may be, or has been, subjected to a forced marriage, adult protection procedures should be initiated. Particular caution should be exercised over confidentiality and information sharing (see below).

- There is no justification for forcing someone to marry or not taking safeguarding action to prevent a forced marriage
- Disclosure of forced marriage should not be dismissed as merely a family matter. For many people, seeking help from an agency is a last resort and so you should take any disclosure seriously
- While forced marriage is commonly a problem for young women, there have been reports of both female and male adults with disabilities being forced to marry. In order to find a spouse, parents may accept a spouse who they would normally view as unacceptable, such as a person from a lower caste or social group
- Sometimes, to ensure a potential spouse is not put off, families may try to hide, play down or make light of a person's disability

Forced marriage involving people with learning disabilities

Some key motives for forcing people with learning disabilities to marry include:

- Obtaining a carer for the person with a learning disability
- Obtaining financial security for the person with a learning disability
- Obtaining physical assistance for ageing parents
- Believing the marriage will somehow 'cure' the disability
- Believing that marriage is a 'rite of passage' for all young people
- Mistrust of the 'system', mistrust of external (social care/health) carers

- Fear that younger siblings may be seen as undesirable if older sons or daughters are not already married

Parents often do not see anything wrong in their actions. Indeed, when it involves a person with a learning disability, they may believe it is the right, or only, option and therefore, may be quite open about their intentions.

Coercion, physical or emotional, is a common feature of forced marriage, including those involving people with learning disabilities. Sometimes a person with learning disabilities may be led to believe, or to say, that the marriage is what they want, but they may not fully understand the implications of that decision. This could be for a variety of reasons including the person wanting to please their family or to do what their siblings have done.

Adults at risk may be particularly defenceless if they rely on their families for care. They may have communication difficulties and they may have fewer opportunities to tell anyone outside the family about what is happening to them. They may be vulnerable because of lack of education about sex or relationships or limited opportunity to speak up for themselves.

Capacity to consent to sexual intercourse and marriage

Some adults with learning disabilities and/or mental health problems do not have the capacity to consent to a marriage.

The task of establishing capacity can be complex. Capacity is the ability to understand information relevant to a decision or action and to understand the consequence of taking or not taking that action or decision. The decision making process can be influenced by significant people in an individual's life. The Adults with Incapacity (Scotland) Act 2000⁸⁴ provides for various types of proxy decision maker to be appointed for an adult who lacks the capacity to make a decision in relation to their welfare or finances. Under the 2000 Act, a guardian or intervener cannot have powers to consent to marriage on behalf of an adult.

It also states that the person's capacity must be maximised and so every effort should be made to provide communication support and access to independent advocacy.

Some people may be unable to consent to sexual intercourse. Sexual intercourse without consent is rape. Section 17 of the Sexual Offences (Scotland) Act 2009⁸⁵ covers capacity to consent to sexual activity of a person with a mental disorder.

⁸⁴ Adults with Incapacity (Scotland) Act 2000: www.legislation.gov.uk/asp/2000/4/contents

⁸⁵ Sexual Offences (Scotland) Act 2009: www.legislation.gov.uk/asp/2009/9/contents

Independent advocacy

Sometimes it is not appropriate for professionals to advocate for people using services because there is a conflict of interest. Victims of forced marriage should be presented with the option of having an independent advocate. As with interpreting, advocates should not be from the victim's family and there may be concerns if they are from the same cultural community. For more information on the role of the independent advocate see the Scottish Independent Advocacy Alliance website: www.siaa.org.uk

Confidentiality and information

For information on confidentiality and information sharing see page 51.

- You must be careful not to inadvertently place a victim at further risk of harm. Risks include approaching the family or the community, mediation, arbitration, use of interpreting services and failing to share information appropriately amongst agencies
- Involving families can be dangerous. Experience shows that the family may not only punish the victim but also deny that the person is being forced to marry, expedite any travel arrangements and bring forward the marriage
- Involving the family includes visiting the family to ask them whether they are intending to force their child to marry or writing a letter to the family requesting a meeting about their child's allegation that they are being forced to marry
- Relatives, friends, community leaders and neighbours should not be used as interpreters, despite any reassurances from this known person
- A third party e.g. family friend, councillor, MP may ask you for information. They may give you a very plausible reason, and may genuinely believe they are acting in the best interests of the victim but you should not tell them anything at all

Information can be shared in order to prevent or detect a crime, and if an adult is at risk of harm even if they have not given their consent. This information should always be shared safely and confidentially and only with those professionals directly involved with the case (see page 51). You should refer to local information sharing protocols. Section 10 of the 2007 Act requires those who hold certain types of information to share it with a local authority which is carrying out an inquiry or investigation under the Act.

You must take great care in handling such information. All records belonging to an individual should be kept secure to prevent unauthorised access by anyone who might pass information to the victim's family (see page 52).

A forced marriage may take place in the UK or abroad. In either situation, you should be ready to give guidance to the person about their rights, the choices open to them and to take action in partnership with other agencies to protect the adult from harm.

The Registrar for Births and Marriages referred H to social work because he was concerned that H might have a learning disability and lack the capacity to be a sponsor for a person entering the country. H was excited about having a wedding and being married as her sisters were already married. Her parents told the social worker that they wanted to protect H, and that it would be easier for her to be married to someone who was familiar with her family and culture and who would be able to look after her when they had gone.

What you should do following a report of forced marriage relating to an adult at risk of harm:

- Gather information as carefully and as discretely as possible (see page 68)
- Initiate adult protection procedures which may include the inter-agency referral discussion with the police. Exercise additional caution over family and community involvement
- Refer to local and national adult protection information sharing protocols
- Seek and share information with the police. Check police and social work records for past referrals of family members, including siblings, for example domestic abuse or missing persons within the family, unreasonable restrictions (withdrawal from education or house arrest)
- Discuss case with Forced Marriage Unit (for professional immigration advice)
- If appropriate, refer the adult to support services experienced in working with survivors of domestic abuse and forced marriage such as Shakti Women's Aid in Edinburgh and Hemat Gryffe Women's Aid in Glasgow
- Seek advice from your local authority forced marriage lead officer and legal services department
- If the person's capacity to consent to marriage is in doubt, arrange for a capacity assessment

Adult support and protection plan

As part of the adult protection process, a protection plan will need to consider possible interventions to protect the adult. These may include:

- Referral to appropriate specialist services for victims of forced marriage (see section 5)
- Consultation with the Forced Marriage Unit (see page 17)
- If the adult at risk wishes to remain at the family home, consider plan to maintain contact without placing them at further risk (see page 47)
- Emergency action – accommodation, Women's Aid refuge, legal remedies (see below)

- Accommodation appropriate to the adult's needs. If you are placing an adult with a learning disability in accommodation with support, you will need to ensure the support team understands the risks involved
- Forced Marriage Protection Orders (see page 75) (legal advice required)
- Adult Support and Protection (Scotland) Act 2007⁸⁶. Removal, Assessment and Banning Orders can be considered for adults at risk as defined by section 3 of the 2007 Act but only as the least restrictive option (legal advice required)
- Action under Mental Health (Care and Treatment) Act 2003⁸⁷
- The adult may take legal action themselves but if they lack the capacity to do so, the local authority or another person could consider seeking an Intervention or a Welfare Guardianship Order under the Adults with Incapacity (Scotland) Act 2000⁸⁸ to proceed on their behalf
- An interdict – various options (see page 96)
- Nullity or divorce proceedings

You should get advice about the various legal options from the local authority legal services and mental health officer team. As a matter of course, adult protection inquiries and investigations should involve all relevant areas of the local authority, as well as other public bodies and agencies. It is important to ensure that information is shared appropriately and that you seek advice from relevant colleagues.

For more information about legal remedies see section 3.

If an adult is reported missing

See page 57.

Do not approach the family, friends or those people with influence within the community as this will alert them to your enquiries and may place the person in further danger. Confidentiality and discretion are vitally important. It is not advisable to contact an overseas organisation to make enquiries.

If you are suspicious because an adult at risk is being taken abroad

The adult may be told, for example, that they are going on a family holiday or to visit relatives. These, of course, could be genuine reasons for a trip and you should make every effort to establish the full facts as soon as possible. You could gently enquire about return dates and plans. However, once an adult at risk has left the country, the legal options to support them to return them to the UK are limited. Seek advice from the Forced Marriage Unit.

If an adult at risk has already been forced to marry

⁸⁶ Adult Support and Protection (Scotland) Act 2007: www.legislation.gov.uk/asp/2007/10/contents

⁸⁷ Mental Health (Care and Treatment) Act 2003: www.legislation.gov.uk/asp/2003/13/contents

⁸⁸ Adults with Incapacity (Scotland) Act 2000: www.legislation.gov.uk/asp/2000/4/contents

Some forced marriage cases come to light when the adult at risk is forced to act as sponsor for their spouse's immigration to the UK. The adult may be reluctant or unable to tell that it was a forced marriage for fear of reprisal. A person whose application to enter the UK as a spouse is refused has a right to know the reasons why – and the right to appeal against the decision. This can place the victim in a difficult position. The Forced Marriage Unit can be contacted to discuss options.

Some cases may initially be reported as domestic abuse. Those forced into marriage may experience years of domestic abuse, but not be able to seek help through fear of further abuse, losing their children, lack of family support, economic pressures and so on. The fact that they were forced to marry may only become apparent much later.

In some cases, the potential or actual spouse may themselves be coerced and/or duped into marriage to a person with a disability.

For all victims of forced marriage, leaving their marriage, family and community may be their only option but many will require support to do this. People with learning disabilities may require greater levels of support for longer periods of time.

Leaving the family and community is always a difficult decision to take for anyone forced into marriage. For many people with learning disabilities it can be even more so, as they may have no experience of life outside the family and no financial, physical, social or emotional support. For those requiring high levels of support, leaving home becomes almost impossible. For example, they might not be capable of maintaining the high levels of secrecy that are required, even if they were to leave.

In addition, leaving their family (or reporting them to the police or simply approaching statutory agencies for help if they are able to) may be seen as bringing shame on the honour of their family in the eyes of the community. This may lead to social ostracism, harassment and other forms of 'honour-based' violence from the family and community (see page 21).

If an adult at risk is repatriated to the UK from overseas following a forced marriage

As a British National, the adult is entitled to a Community Care Assessment under the Community Care and Health (Scotland) Act 2002⁸⁹.

To determine which authority should provide funding, 'ordinary residence' will need to be established. It is the local authority within which the adult had their last permanent residence which has financial responsibility. 'Ordinary resident' is described in detail in the Scottish Government Circular CCD 3/2010⁹⁰.

⁸⁹ Community Care and Health (Scotland) Act 2002: www.legislation.gov.uk/asp/2002/5/contents

⁹⁰ www.sehd.scot.nhs.uk/publications/CC2010_03.pdf

For safety, the adult may need to be accommodated or relocated with a different local authority. This may require a transition period while funding and support are negotiated.

If a spouse who is an adult at risk has come to the UK from overseas

If someone comes to the UK from overseas on a spousal or other temporary visa, she may have 'no recourse to public funds' (see page 98). She may believe she has no option but to remain in the marriage and feel unable to co-operate with social work or anyone in 'authority'. She may not speak English and may not be aware of sources of support. See page 153 for information about support available.

Under the domestic violence concession (see page 153) she can apply for indefinite leave to remain as a spouse of a person present and settled in the UK.

Anyone who has been granted 'indefinite leave to enter or remain', refugee leave, humanitarian protection, discretionary leave or who has a right of abode in the UK is entitled to public funds on the same basis as a British citizen. They are also entitled to a community care assessment.

Remember:

It is unlawful for anyone to provide unregulated immigration advice or immigration services. You should ensure that immigration advice is given by a regulated adviser/organisation. Remember that you can consult the Forced Marriage Unit at any time (see page 17).

20. Guidelines for local authority housing and homelessness staff

This chapter focuses on options for emergency and permanent accommodation under homelessness legislation (see page 97). The specific actions you take will depend on the particular circumstances of the case. A victim may need to be accommodated elsewhere in the UK or may have come to your authority from another part of Scotland, elsewhere in the UK or from overseas.

First, read the key practice messages on page 5.

See also section 2: information for all practitioners.

V was 16 and could not stay at home. She was temporarily re-housed in refuge accommodation in England. It was very difficult to arrange this because she was viewed as an adult in Scotland but a child elsewhere in UK (with implications for statutory funding, refuge availability and so on). She had to leave school in Scotland as a result of relocating and, although she continued to receive support from the police and a women's organisation, she was very isolated. No civil case was pursued. Despite repeated attempts by family and community members/organisations to obtain information, her whereabouts have not been compromised. She remains completely cut off from her family.

Background

Victims may present to you as homeless or at risk of homelessness. You may also be contacted by a third party such as the Forced Marriage Unit or police. This may be in an emergency. Forced marriage is a form of domestic abuse and, therefore, the local housing authority has a duty to secure accommodation for victims under homelessness legislation (see page 97).

How housing staff can make a difference

For victims of forced marriage, leaving the family can be very hard. BME women can feel this acutely given the very close nature of some family structures and especially those with a disability or illness and young people. The victim may have no experience of life outside the family.

Those who do leave often live in fear of their families who go to considerable lengths to find them and ensure their return. They are often subjected to extreme violence and threats. So, it is vital to ensure that those fleeing forced marriage have somewhere safe to stay. Housing staff can help by providing safe accommodation, in an emergency, temporarily and permanently. You should also cooperate across local authority area boundaries in order to facilitate the movement of victims if required for their safety.

The circumstances of forced marriage are such that victims may return to families and communities. This is not a failure on their part. Stress to victims that your service is always available.

Some women who present to you may not have the correct documents to prove their identity; some may be British nationals but may not be able to prove this. Others may not have leave to remain in the UK and, therefore, will not have recourse to public funds (see below). But, whatever their situation, frontline staff in local housing authorities should be aware of the extreme risks facing victims and be prepared to help. Even if a woman has 'no recourse to public funds' there may be actions you can take in partnership with other agencies, at least in the short term.

Local authorities and registered social landlords must allow anyone aged 16 or over to apply to their housing list. If someone is over 16 they have the right to make a homelessness application. There are particular issues for young women in the 16 to 18 age group who may be particularly vulnerable because of age, inexperience and suggestibility but not in the category of 'a child'. Young people in these circumstances may have led a very sheltered existence and be particularly naïve and vulnerable to risk. You should be very sensitive to their need for safety and security. It is important to ensure that you have procedures in place and that there is clear consideration of the range of assistance for young people who do not fit within adult support and protection or child protection processes.

The focus should not be on age. It should be on taking action. Any young person who is a victim, or potential victim of forced marriage, requires vigorous protective action. You have an important role in providing the level of inter-agency protection that she requires.

This includes ensuring that all partner agencies providing homelessness accommodation on behalf of local authorities, such as housing association and private sector landlords, are competent to identify and respond consistently, safely and effectively when forced marriage is an issue.

Your response

To respond to a victim of forced marriage:

- See page 65 for recommended actions in all cases
- Gather information as carefully and as discretely as possible (see page 68)
- Seek advice from your local authority forced marriage lead officer and legal services department
- If necessary, seek advice from the local authority adult support and protection/child protection lead officer
- Discuss case with Forced Marriage Unit (for professional immigration advice)
- If appropriate, refer to support services experienced in working with survivors of domestic abuse and forced marriage such as Shakti Women's Aid in Edinburgh and Hemat Gryffe Women's Aid in Glasgow

Mediation with the family or other community members should not be attempted as this may endanger her further (see page 56)

Housing options

- You should take full account of the victim's needs and wishes together with a detailed risk assessment in arranging emergency, temporary and permanent accommodation
- Her housing plan, temporary and permanent, should be based on her needs and the risks she faces
- This means taking into consideration whether she should be accommodated in an area where there are members of her community. Although she might be less isolated, there are potential dangers. You should discuss this fully with her
- The victim may want to be accommodated locally, with good safety planning in place (see page 60) and legal protection (see section 3)
- Many women need to be housed (temporarily) and/or (permanently) elsewhere in Scotland or the UK (away from perpetrators and the wider community)
- Women's Aid provides a network of safe refuges across the UK. Shakti Women's Aid and Hemat Gryffe Women's Aid (see page 146) have refuges in Scotland specifically for BME women but all Women's Aid groups can provide refuge and other support. This is important as women may need or want to go elsewhere in Scotland or the UK for safety reasons
- It is vital that you take account of women's need for safety in considering the suitability of different types of temporary accommodation. A scatter flat with support is a good option. Managed group accommodation, such as a hostel, is likely to be a more supportive and safe environment (but see below) than the relative isolation and limited facilities of a B&B which should not be used
- Hostels for female victims should be for women only
- You should take extra care if placing victims in 'mainstream' hostels to avoid intimidation and bullying from other residents
- The address should be confidential
- The accommodation should not be in the middle of a dense BME community area
- Young people leaving their families may need additional support with 'life skills' as they may have been very 'protected' within their family environment
- Refuge accommodation for male victims tends to be limited so hostels may be the only alternative

Safety alert

- Do not use a relative, friend, community leader or neighbour as an interpreter (see page 45)
- Do not tell family members or friends where the woman is
- You may be asked or pressured by relatives, councillors, MPs, MSPs, and those with influence within the community for information or to say where the person is living. They may give you a very plausible reason for the request

and may be well-intentioned. Do not divulge any information. This may place the victim in great danger

Adult support and protection and accommodation

If you suspect or believe that an adult at risk (see page 130) is a victim, or in danger of, forced marriage, refer to local authority adult protection procedures and contact your local adult (public) protection unit.

Children and young people

Local authorities have a duty to ensure that children and young people are protected. This includes having somewhere safe to live. Children and young people who have been forced to marry and those who are estranged from their families because of their refusal to accept a forced marriage often require long-term accommodation to help them live away from their families and start a new life.

The National Guidance for Child Protection in Scotland (2014)⁹¹ sets out local authority responsibilities, including those of housing staff to provide a multi-agency response.

If a child or young person presents as a victim, or potential victim of forced marriage, you should immediately initiate child protection procedures and contact your child protection lead officer or the local authority lead officer for forced marriage.

You must deal with the young person as sensitively as possible and be aware of the very serious risks that she faces.

The fact that a child or young person under the age of 16 may have gone through a form of marriage does not detract from your responsibilities to assess the child's needs and take action to protect her, including providing her with accommodation although this will require contact with social work services.

Section 25(3) of the Children (Scotland) Act 1995 enables a local authority to provide accommodation for any person within their area who is over 18 but not yet 21, if they consider that to do so would safeguard or promote their welfare. For children under 18, access to accommodation will depend on the specific circumstances of each case and applicable legislation

Other legal remedies to protect adults and children

See section 3 for more information.

Forced marriage is illegal. A victim can also take action to protect themselves using civil orders including: Forced Marriage Protection Order; Matrimonial/Domestic

⁹¹ National Guidance for Child Protection in Scotland (2014):
www.scotland.gov.uk/Publications/2014/05/3052

Interdict; Non-harassment Order; Exclusion Order. It is also possible for either the victim or a third party (see page 76) to apply to the court for a Forced Marriage Protection Order.

Funding for legal advice is not counted as public funds, and individuals may be entitled to free legal advice whatever their immigration status.

No recourse to public funds

People whose immigration status means they do not have a legal right to UK public service funds have few options for housing and financial support (see page 98). Women who are fleeing abuse may be able to apply for permission to settle permanently (also known as 'indefinite leave to remain') under what is commonly known as the 'domestic violence rule'.

If a woman's visa contains the words 'no recourse to public funds,' she is not entitled to public funds such as accommodation from the local authority's housing department and most social security benefits. However, a spouse or partner who is eligible to qualify for indefinite leave to remain as a victim of domestic violence who is destitute can apply for access to public funds under the Destitution Domestic Violence (DDV) concession.

Those eligible under the concession have their leave to remain, and conditions associated with this, varied to allow them recourse to public funds. Temporary leave to remain under the concession is issued for three months during which time an application for indefinite leave to remain under the domestic violence rule must be made. (Application for Destitution Domestic Violence (DDV) concession forms and guidance are at: www.gov.uk/government/publications/application-for-benefits-for-visa-holder-domestic-violence)

UK Visas and Immigration recommends that legal advice is obtained before a woman applies to UK Visas and Immigration to see if she is entitled to be granted leave. Alternatively, a woman can apply directly to UK Visas and Immigration under the DDV concession.

Section 5: Contacts and information

'Protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse' United Nations Convention on the Rights of the Child, Article 19

21. Key contacts

22 Resources and further reading

21. Key contacts

This section gives details of national support agencies and other useful contacts for agencies which have a particular expertise relevant to forced marriage. This is not an exhaustive list but the agencies below should also be able to provide signposting to other agencies and to local services.

Government departments

- Forced Marriage Unit

Joint Foreign & Commonwealth Office/Home Office service

www.fco.gov.uk/forcedmarriage

Helpline: 020 7008 0151 (Mon-Fri: 9am–5pm)

Email: fmufco.gov.uk

For emergencies out of hours, phone 020 7008 1500 and ask for the Global Response Centre

- Foreign & Commonwealth Office

Represents the UK Government overseas

www.fco.gov.uk

- British High Commissions and Embassies

For details of all British High Commissions and Embassies see online at

<https://www.gov.uk/government/publications/foreign-embassies-in-the-uk>

- Office of the Immigration Services Commissioner

Responsible for regulating immigration advisers

<http://oisc.homeoffice.gov.uk/>

- UK Visas and Immigration

Enforces immigration and customs regulations and considers applications for permission to enter or stay in the UK, and for citizenship and asylum

<https://www.gov.uk/government/organisations/uk-visas-and-immigration>

Help for victims

- Shakti Women's Aid

Support, advocacy, refuge and information to all black minority ethnic women, children and young people experiencing and/or fleeing domestic abuse. Shakti is a member group of Scottish Women's Aid (see below)

<http://www.shaktiedinburgh.co.uk/>

Helpline: 0131 475 2399

- Hemat Gryffe Women's Aid

Support, advocacy, refuge and information for black minority ethnic women, children and young people experiencing and/or fleeing domestic abuse. Hemat Gryffe is a member group of Scottish Women's Aid (see below)

<http://www.hematgryffe.org.uk/>

Helpline: 0141 353 0859

- Scottish Women's Aid

National organisation responding to domestic abuse with a network of local member groups providing direct services to women, children and young people experiencing domestic abuse. This includes advocacy, support, information and refuge accommodation.

<http://www.scottishwomensaid.org.uk/>

Business line: 0131 226 6606

- Scottish Domestic Abuse helpline

For anyone who has experienced domestic abuse (signposting for male victims)
0800 027 1234 (24 hours)

- Amina Muslim Women's Resource Centre

Muslim women's resource centre which works with Muslim women

www.mwrc.org.uk

Helpline: 0808 801 0301

- roshni

Promotes the safety, wellbeing and rights of minority ethnic communities and provides direct support services to male and female victims of abuse

www.roshni.org.uk

Freephone helpline: 0808 802 2222

- Saheliya

Supports the mental health and well-being of black and minority ethnic women in Edinburgh

www.saheliya.org.uk

Tel: 0131 556 9302

- Rape Crisis Scotland Helpline

For anyone, male or female who has experienced sexual violence

www.rapecrisisscotland.org.uk

08088 01 03 02 (daily 6pm to midnight)

Children-specific

- Child Line

Counselling service for children and young people

www.childline.org.uk

Helpline: 0800 1111 (24 hours)

- Scottish Child Law Centre

Free legal advice for and about children

<http://www.sclc.org.uk/>

Helpline for under 18s: 0800 328 8970

Advice line: 0131 667 6333

Men-specific

- Pathway

Edinburgh-based services at Health in Mind for black and minority ethnic men who are experiencing any issue that may affect their mental health and wellbeing

www.health-in-mind.org.uk/services/trauma-services.html

- Men's Advice Line

Confidential helpline for all men experiencing domestic violence (including forced marriage)

www.mensadvice.org.uk

Helpline: 0808 801 0327

See also: <http://www.mensadvice.org.uk/pages/male-victims-of-forced-marriage.html>

Other support

- LGBT Domestic Abuse Project

Scotland's Lesbian, Gay, Bisexual and Transgender domestic abuse project

www.lgbtdomesticabuse.org.uk

- Broken Rainbow

Confidential support to all members of the LGBT communities, their family, friends, and agencies supporting them

www.brokenrainbow.org.uk

Helpline: 0800 999 5428

See also www.fco.gov.uk/resources/en/pdf/forced-marriage-lgbt

- Samaritans

Confidential emotional support service

www.samaritans.org/Helpline: 08457 90 90 90 (24 hours)

If abroad see www.befrienders.org/ for nearest helpline

- Scottish Refugee Council

Helps refugees and people seeking asylum in Scotland

www.scottishrefugeecouncil.org.uk

Tel: 0141 248 9799

- Victim Support Scotland

Provides emotional support, practical help and essential information to victims, witnesses and others affected by crime

www.victimsupportsco.org.uk

Helpline: 0845 603 9213

- Voice UK

Supports people with learning disabilities and other vulnerable people who have experienced crime or abuse

<http://www.voiceuk.org.uk>

Helpline: 0808 802 8686

- The Ishara project

Part of Deaf Connections delivering specialist services to adult deaf people across Scotland

www.deafconnections.co.uk/Ishara/information-about-forced-marriage.html

Law and rights

- Citizen's Advice Scotland

<http://www.cas.org.uk/>

- Ethnic Minorities Law Centre

Provides legal services exclusively to black and ethnic minority communities

www.emlc.org.uk

- Legal Services Agency (LSA)

Provides legal assistance to women and girls including refugees and migrant women. LSA provides a free telephone advice line and a free drop in on certain days (check website for details)

www.lsa.org.uk/

Freephone line: 0800 316 8450

- Family Law Association

Provides a point of reference for the public and for other organisations on family law issues

www.familylawassociation.org/

- Law Society of Scotland

Professional governing body for Scottish solicitors

www.lawscot.org.uk/

- Scottish Courts

Single access point for information relating to civil and criminal courts within Scotland

www.scotcourts.gov.uk/

- Scottish Legal Aid Board

Responsible for managing legal aid in Scotland

www.slab.org.uk/

Main switchboard: 0131 226 7061

Scottish Children's Reporter Administration

National body focusing on children at risk

www.scra.gov.uk

- Shelterline

Free, national telephone advice line staffed by trained housing advisers

scotland.shelter.org.uk

Helpline: 0808 800 4444

Telephone interpreting

- Language Line

Telephone interpreting for emergency and non-emergency needs

www.languageline.co.uk/

22. Resources and further reading

The following section provides links to websites which include useful resources and background information and a list of relevant books and films.

Forced Marriage Unit

UK-based

Animated documentaries: www.fco.gov.uk/en/travel-and-living-abroad/when-things-go-wrong/forced-marriage/forced-marriage-animations

Case studies of good practice: www.fco.gov.uk/en/travel-and-living-abroad/when-things-go-wrong/forced-marriage/case-studies/

Karma Nirvana

www.karmanirvana.org.uk

England-based. Supports victims and survivors of forced marriage and honour based abuse

Forward

www.forwarduk.org.uk/resources/resources#id7

England-based. Works with individuals, communities and organisations to transform harmful practices and improve the quality of life of vulnerable girls and women

Rights of Women

www.rightsofwomen.org.uk

England-based. Produces variety of publications on women and immigration

Southall Black Sisters

www.southallblacksisters.org.uk/

England-based not-for-profit organisation, which aims to meet the needs of black (Asian and African-Caribbean) women

Ashiana

www.ashiana.org.uk/

England-based. Support for South Asian, Turkish and Iranian women

Newham Asian Women's Project

www.nawp.org/

England-based. Support for South Asian women and their children fleeing domestic violence

Henna Foundation

www.hennafoundation.org/

Wales-based. Works nationally and internationally to advance the needs, concerns and aspirations of Muslim women, children and the families that they live within

Ann Craft Trust

www.anncrafttrust.org/index.php

England-based. Works to ensure that organisations which support disabled children and vulnerable adults are aware of abuse and protection issues. See also Forced Marriage and Learning Disabilities:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/35533/fm-disability-guidelines.pdf

Deaf Connections (Ishara project)

www.deafconnections.co.uk/Table/Ishara/

Information on forced marriage in sign language online

Domestic abuse resources and training for schools in Scotland

www.dartsscotland.org

Violence against women national training resources

www.womenssupportproject.co.uk/vawtraining

Books

Fiction

Arranged Marriage by Chitra Banerjee Divakaruni

Brick Lane by Monica Ali

The Marriage Bureau for Rich People by Farahad Zama

(Un)arranged Marriage by Bali Rai

Memoir

Daughters of Shame by Jasvinder Sanghera

Sold by Zana Muhsen

Shame by Jasvinder Sanghera

Unbroken Spirit by Ferzanna Riley

Without Mercy by Miriam Ali

Non-fiction

Marital Discord: Recapturing the full Islamic spirit of Human Dignity by Abusulayman Abdul Hamid

Pathways to Justice by Rights of Women

The Muslim Marriage Guide by Ruqaiyyah Waris Maqsood

What Islam Really Says About Domestic Abuse by Shaykh Amer Jamil

Al Jazeera

english.aljazeera.net

Various online clips and films including Al Jazeera's 'Everywoman' series, which features international documentaries and correspondence on issues of forced marriage and violence against women. These include 'Eat Sugar and Speak Sweetly' which is about forced marriage in Europe

Killing in the Name of Honour

www.cultureunplugged.com/play/5114/Killing-in-the-Name-of-Honour--Turkey----Women-on-the-Frontline

Documentary about 'honour killing' in Turkey

Tying the Knot

Faction Films: www.factionfilms.co.uk

12-minute video for young people (12-18) featuring young people's views on marriage. The video distinguishes between arranged and forced marriages. There is also an accompanying pack with background information and discussion points

Love Snatched

Faction Films

This video tells the stories of several young peoples' fight for freedom. Lawyers and activists define forced marriage as a violation of human rights. Discusses some of the help available

Narina's Story

Faction Films

Narina describes her remarkable escape from the threat of a forced marriage, along with her two sisters

Other

Other films containing some of the issues connected to forced marriage include East is East (15), Monsoon Wedding (15), Bride and Prejudice (12A), Ae Fond Kiss (15) (which is set in Scotland) Brick Lane (15), Provoked (15), Khuda Ke Liye (In the Name of God) (15), Bend it Like Beckham (12), Bol (15)

23. Appendix: Domestic violence⁹² provisions in the immigration rules

Domestic violence perpetrated by a British citizen/settled person

A woman may have permission to reside in the UK because she is in a relationship with a man who is a British Citizen or has permanent residence in the UK (sometimes called Indefinite Leave to Remain). Initially, this woman will be granted a residence permit for a probationary period which will not give her access to public funds. At the present time, the probationary periods are as follows:-

- 2 years if the woman applied before 9 July 2012
- 5 years if the woman applied after 9 July 2012 issued in blocks of 30-month residence permits

If the woman can show that the relationship broke down permanently within the probationary period because of domestic violence then she may be able to make an application to remain in the UK permanently on production of certain evidence.

Before making this application, the woman can apply for a three month residence permit under the Domestic Violence Concession which gives her access to public funds.

Domestic violence perpetrated by European Economic Area [EEA] national

A woman may have permission to live in the UK because she is in a relationship with a man who is an EEA national. If this relationship permanently breaks down because of domestic violence, she may be able to apply to remain in the UK in her own right (called a retained right of residence) provided a series of conditions are met.

A woman's access to public funds in this situation depends on the underlying factual circumstances of the case.

Dependants

A woman may have permission to live in the UK as the dependant of her spouse/partner who may be in the UK studying, working or in another category (such as refugee).

A woman may also be in the UK on a 10-year route to settlement because she could not meet the conditions for the 5-year probationary permit or other family migration category.

If the relationship breaks down permanently because of domestic violence, it is likely that the woman will require to apply to remain in the UK in her own right. She may

⁹² The term 'domestic violence' is used by the UK Government and UK Visas and Immigration

have various routes open to her depending on her circumstances but legal advice must be taken.

International protection/human rights

Depending on the circumstances, a woman may be able to remain in the UK because she would be at risk of persecution/serious harm in her home country. There may be other human rights considerations as to why she should remain in the UK.

Forced marriage and violence within the family/community are forms of gender-based violence recognised by the Home Office as being able to found a request for protection within the UK. See the Home Office policy on gender issues in the asylum claim at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257386/gender-issue-in-the-asylum.pdf

Human trafficking

There is a National Referral Mechanism in Scotland to support victims of human trafficking. For more information see:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/181550/Human_Trafficking_practical_guidance.pdf

If an individual is subject to immigration control and is identified as a victim of human trafficking then a renewable one year residence permit may be granted in certain circumstances.

If an individual is in the process of being identified then they will be entitled to accommodation and other material assistance.

For information on safeguarding children who may have been trafficked see: www.scotland.gov.uk/Resource/Doc/219212/0058832.pdf

No recourse to public funds

A woman may not qualify for public funds because of her immigration status.

Public funds are specifically defined within immigration legislation and can be a complex area. Further guidance is on the Home Office website:

<https://www.gov.uk/government/publications/public-funds--2/public-funds>

This prohibition does not apply to legal assistance.

Depending on the circumstances of each case, it may be possible to access other avenues for accommodation and support such as through social services, the Domestic Violence Concession or from the Home Office.

A woman's entitlement to remain in the UK and her access to support and assistance should always be checked and legal advice taken. The Law Society of

Scotland can help with finding a legal representative. The Scottish Refugee Council also has lists of legal advisers who can assist in Glasgow and Edinburgh:
[http://www.scottishrefugeecouncil.org.uk/how we can help/i am still waiting for a decision on my asylum claim/legal representation](http://www.scottishrefugeecouncil.org.uk/how_we_can_help/i_am_still_waiting_for_a_decision_on_my_asylum_claim/legal_representation)

Applicants need to submit as much information and evidence as possible to support the application: www.gov.uk/settle-in-the-uk/y/you-re-the-family-member-of-a-british-citizen/no/on-a-work-visa/tier-5

These include:

- A court order in connection with the domestic violence
- Evidence of a Multi-Agency Risk Assessment Conference (MARAC) being convened on the applicant's behalf
- A medical report from a hospital doctor confirming that the applicant has injuries consistent with being the victim of domestic violence, and/or a letter from a GP who has examined the applicant and is satisfied that the applicant has injuries consistent with being a victim of domestic violence
- An undertaking given to a court that the perpetrator of the violence will not approach the applicant who is the victim of the violence
- A police report confirming attendance at an incident resulting from domestic violence
- A letter from a social work department confirming its involvement in connection with domestic violence
- A letter of support or a report from a domestic violence support organisation

The application should be made on a current SET (DV) Form version (application for indefinite leave to remain as a victim of domestic violence):

<https://www.gov.uk/settle-in-the-uk/y/you-re-the-family-member-of-a-british-citizen/no/on-a-work-visa/tier-5>

Further information:

Immigration enquiries: <https://www.gov.uk/contact-ukvi/overview>

24. Appendix - Crown Office and Procurator Fiscal Service

The Crown Office and Procurator Fiscal Service (COPFS) is Scotland's sole independent prosecution service. They receive reports about crimes from the police and other reporting agencies and then decide what action to take, including whether to prosecute someone.

The COPFS Key Objectives include:

- to secure the confidence of our diverse communities by improving the delivery of justice through the timely, efficient and effective prosecution of crime;
- to give priority to the prosecution of serious crime, including drugs trafficking and persistent offenders;
- to provide services that meet the information needs of victims, witnesses and next-of-kin, in co-operation with other agencies

COPFS plays a pivotal part in the justice system, working with other partners to make Scotland safe from crime, disorder and danger.

In considering whether any action should be taken in relation to reports of crime, the Procurator Fiscal must take account of both legal and public interest considerations.

Legal Considerations

The Procurator Fiscal must be satisfied that there is crime under Scots law and that there is sufficient admissible evidence to justify commencing proceedings. In general, for there to be sufficient evidence there must be corroboration; that is evidence from at least two separate sources to establish the essential facts of the case, i.e. that the crime was committed and that the accused was the perpetrator. The prosecution must prove these matters beyond reasonable doubt.

Public Interest Considerations

Once satisfied that the legal tests are met, the prosecutor must consider what action is in the public interest. Assessment of the public interest often includes consideration of competing interests, including the interests of the victim, but also those of the accused and the wider community. COPFS will take into account the diverse needs of victims, witnesses, communities and the rights of those accused of crime.

The final decision on whether or not to prosecute is for the Procurator Fiscal alone. This also applies to any subsequent decision to continue or discontinue proceedings. This removes the responsibility from the victim and protects them from any undue pressure from other parties.

The Prosecution Code which is available at www.copfs.gov.uk provides full information about the factors that prosecutors take into account when considering whether to take action in a case.



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ISBN: 978-1-78412-821-0 (web only)

Published by the Scottish Government, October 2014

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

Produced for the Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
DPPAS36956 (10/14)

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