



Forced marriage, safeguarding and the law

Adult safeguarding laws and policies are designed to help protect people who have care and support needs that may make them more vulnerable to abuse or neglect. Forced marriage of people with learning disabilities, dementia or mental ill-health is associated with a range of physical, sexual, emotional and financial abuses and is therefore a safeguarding issue. Adult safeguarding is defined in law as:

Safeguarding means protecting an adult's right to live in safety, free from abuse and neglect. It is about people and organisations working together to prevent and stop both the risks and experience of abuse or neglect, while at the same time making sure that the adult's wellbeing is promoted including, where appropriate, having regard to their views, wishes, feelings and beliefs in deciding on any action. This must recognise that adults sometimes have complex interpersonal relationships and may be ambivalent, unclear or unrealistic about their personal circumstances.'
([Care Act statutory guidance, 2020; paragraph 14.7](#))

The Care Act 2014 sets out what different organisations must do in order to protect vulnerable adults from abuse. The law says that local authorities **must** make enquiries when there is a:

'... reasonable cause to suspect that an adult in its area (whether or not ordinarily resident there)–

(a) has needs for care and support (whether or not the authority is meeting any of those needs),

(b) is experiencing, or is at risk of, abuse or neglect, and

(c) as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it.' ([Care Act 2014, section 42](#))

Therefore in any situation where there is concern that someone has or may be forced into marriage, either because they do not have the capacity to consent or



because they are saying no to the marriage, adult safeguarding procedures should be followed.

The UK Government Forced Marriage Unit (FMU) have produced [statutory guidance](#) and [multi-agency practice guidelines](#) which set out expectations of agencies and practitioners in dealing with forced marriage.

In addition to general safeguarding policy and legislation there are specific criminal and civil laws which can be used in connection with forced marriage.



Criminal laws relevant to forced marriage

Anti-social Behaviour, Crime and Policing Act 2014

Forcing someone to marry became a criminal offence in June 2014. The Anti-social Behaviour, Crime and Policing Act 2014 was designed to send a strong message that the practice of forced marriage will not be tolerated and should stop. The Act states that a person commits an offence in England and Wales if they:

- a) Use violence, threats or any other forms of coercion for the purpose of causing another person to enter into marriage, and*
- b) Believe, or ought to reasonably believe, that the conduct may cause the other person to enter into the marriage without free and full consent. ([Anti-social Behaviour, Crime and Policing Act 2014, s.121](#))*

This Act also makes it a criminal offence to use deception with the intention of causing someone to leave the UK in order to be forced to marry abroad. An example of this would be persuading someone to leave the country by telling them that a relative is very ill and needs to be visited, or that the family are travelling to the wedding of a relative.

Importantly, the Act is clear that the offence of forced marriage is committed in all cases where people lack capacity to consent to marriage, regardless of whether violence, threats or coercion are used. This means that the marriage of any person who lacks capacity to consent – because of factors such as having a learning disability, dementia or mental ill-health – is a forced and unlawful marriage.

Forcing someone to marry is a crime which is punishable by up to seven years in prison or an unlimited fine.



Sexual Offences Act 2003

Men and women who are forced into marriage are likely to be subjected to unlawful sexual activity – that is sexual assault and/or rape. Women who are forced to marry may be subjected to repeated rape until they become pregnant. Some people with learning disabilities may not understand they are being raped.

The [Sexual Offences Act 2003](#), says that compelling, inciting or facilitating a person with impaired capacity to engage in sexual activity without consent is an offence. This means that sexual activity with a person who lacks capacity to consent is a crime, even if the person appears to be compliant.

Civil laws relevant to forced marriage

Forced Marriage (Civil Protection) Act 2007

The [Forced Marriage \(Civil Protection\) Act 2007](#) gives a court the power to make a Forced Marriage Protection Order to help protect a person from forced marriage. Forced Marriage Protection Orders can be used both to prevent a forced marriage from occurring (for example, by lodging the individual's passport with the court in order to stop them being taken out of country) and to protect those who have already been forced to marry, (for example, by ordering that a victim's whereabouts are revealed to the authorities so that help can be given). A Forced Marriage Protection Order contains conditions that are legally binding. This means that if someone breaches the conditions of a Forced Marriage Protection Order they can be called back before the court. The [Anti-social Behaviour, Crime and Policing Act 2014 s.120](#) makes breach of an Forced Marriage Protection Order a criminal offence, punishable by up to five years in prison.

An application for an Forced Marriage Protection Order can be made by the person who is in need of protection from forced marriage (adult or child); by a relevant third party (for example, a local authority social worker); or, with



permission from the court, any other person. There is no fee for making an application to the court for a Forced Marriage Protection Order and, at the time of writing, [legal aid](#) was available for those needing help to make such applications. To make an application to the court as a relevant third party, practitioners need to [complete a form](#) and provide evidence of the circumstances of the person to be protected and of their wishes and feelings (if known). The application process is relatively simple and little evidence other than that information already known about the situation is required. The form asks the applicant to provide their own name, that of the person to be protected and for a brief statement outlining the reasons for the application including:

- your connection with the person to be protected;
- what you know of the circumstances of the person to be protected;
- the wishes and feelings of the person to be protected so far as you know them.

A practitioner should consider applying for a Forced Marriage Protection Order if they consider a person to be at risk of forced marriage or where a forced marriage has taken place. If the person lacks capacity to consent the practitioner can apply on behalf of that person. Importantly – it is possible to apply for a Forced Marriage Protection Order without the knowledge or consent of the victim. Further information on applying for an Forced Marriage Protection Order can be found at: <https://www.gov.uk/apply-forced-marriage-protection-order>

Mental Capacity Act 2005 and forced marriage

Whether or not a person has the mental capacity to make the decision to marry is crucial in determining whether or not the marriage of someone with a learning disability, dementia or mental illness is a forced marriage.

The [Mental Capacity Act 2005](#) sets out to protect and empower people who may lack capacity to make certain decisions. The Act and its associated [Practice Guidance](#) set out the process by which a decision may be made on behalf of a person who lacks capacity to make that decision for themselves. Any [decisions](#)



[made on behalf on another person](#) must be made in that person's [best interest](#). Importantly, however, there are some [decisions that cannot be made on behalf of another person](#) and this includes the decision to marry (Mental Capacity Act 2005, s.27). This means that if someone lacks the capacity to decide for themselves that they wish to marry, nobody else can decide on their behalf that they should marry. A person who lacks the capacity to decide to marry therefore cannot lawfully marry.

Having the capacity to marry means more than the ability to say 'yes' to a marriage or civil partnership. It means understanding the legal, financial and social implications of marriage (e.g. having sex is normally expected within marriage). However, it is also important to note that someone with a learning disability who lacks capacity to consent to marriage may be able, with support, to reach a point where they do understand the implications of marriage and therefore be able to give consent and be lawfully married. The issue of capacity to consent to marry is discussed in more detail in [Information Sheet 4](#).

Court of Protection

The Mental Capacity Act 2005 created the [Court of Protection](#) which is empowered to make decisions about to the property, affairs, healthcare and personal welfare of adults who lack capacity. The Court of Protection also has the power to make declarations about whether someone has the capacity to make a particular decision, including the decision to marry. The court can also grant injunction(s) to restrain family members from arranging a marriage or to prevent someone being taken overseas for the purpose of marriage.

If a person lacks the capacity to consent to marry a local authority can make an application to the Court of Protection for declarations and orders to prevent a marriage from going ahead. A person who lacks capacity, including those with a learning disability, can also be supported to take court action through the assistance of a [litigation friend](#). A litigation friend could be a parent or guardian, a family member or friend, a solicitor or a professional advocate, e.g. an [Independent Mental Capacity Advocate](#).