



Understanding capacity to consent to marry - information for family members and carers

The difference between forced marriage and arranged marriage

There are differences between a forced marriage and an arranged marriage. In arranged marriages, the family of both spouses take the lead in arranging the marriage but the decision to accept the arrangement or not remains with the two people getting married. In forced marriage one or both spouses do not consent (agree) to the marriage. The giving of consent by both spouses is necessary for a marriage to be lawful. Some people, because of issues such as having a learning disability, dementia or mental ill- health, may not be able to give their consent. It is against the law to arrange the marriage of someone who cannot give their consent to marry; this would be a forced marriage and forcing someone to marry is a criminal offence. Even if your relative seems happy about getting married, if they cannot consent to the marriage, because they do not understand what they are agreeing to, it would be against the law. For more information on the law in relation to forced marriage, see [Information Sheet 2](#).

What does 'capacity to consent' mean?

Capacity to consent is about a person's ability to understand the decisions they are making. In the case of marriage, the person must understand what being married means and what it might entail. For example, they would need to understand that being married means having a sexual relationship which could lead to pregnancy and having children; they would also need to know that marriage can give their spouse rights over their money and property. It is not enough that someone appears happy or says yes to getting married – they must understand what they are saying yes to, and they must understand that getting married is more than just attending a ceremony or celebration.

Generally, where someone lacks capacity in relation to making a particular decision, other people may be asked to make decisions on their behalf, so long as any such decision is made in their best interests. For example, family members or practitioners might decide that it is in a person's best interest to live in a certain place, even though the person themselves lacks the capacity to consent to such a decision. However, there are certain [decisions which cannot be made on behalf of another person](#) and this includes the decision to marry or have a sexual relationship.

Who decides about a marriage?

Sometimes families believe that they have the right to make the decision that their relative should marry, or that marriage would be best for their relative. This is often the case when families are trying to make sure their relative has someone to care and look after them in the long term. Whatever the thinking behind the marriage, if the person getting married cannot understand what they are agreeing to – if they do not have 'capacity to consent' – the marriage would be a forced marriage and unlawful. Nobody can agree to marriage, civil partnerships or sexual relations on behalf of someone who cannot make the decision for themselves. This means that if your son or daughter is lacks the capacity to decide for themselves that they want to marry then they cannot lawfully marry.

Case Example

Sanjeev is 31 years old, he has physical and learning disabilities and lives with his parents who provide care for him. Sanjeev needs support with all areas of his daily living, and his parents make most decisions for him. Sanjeev's parents are worried that, as they get older, they will not be able to care for him. They want to make sure he is loved and



properly cared for and so have arranged for a family member to find a wife for him. Sanjeev's parents believe that because they have made all decisions about his care and support throughout his life, they can decide for Sanjeev to be married. They think they are doing what is best for him. They arrange to take Sanjeev to India to be married. Sanjeev knows he is going on holiday and to a party and is happy about this, but he does not know what marriage is and would not understand what being married means. As Sanjeev does not have capacity to consent, this marriage would be against the law; it would be a [forced marriage](#). It is a forced marriage even if it does not take place in the UK.

Can capacity to consent change over time?

While some people may always lack capacity to consent to marry, others may learn new skills that can help them to gain capacity and make the decision for themselves. Support can be given to help a person with learning disabilities to understand what marriage is, and the differences that being married would make in their life (e.g. moving to a new house to live with their husband or wife; sharing their money).

If you are concerned about your relative not having capacity to consent to marriage, please contact your Local Authority's [Adult Social Care Services](#) or your Community Learning Disability Team to discuss the issues with a social worker or health practitioner (e.g. a clinical psychologist).

You can find out more information about what forced marriage and about capacity to consent in our [film](#) and [workbook](#). It might also help to read the [case study collection](#).