

FORCED MARRIAGE AND ADULTS WITH LEARNING DISABILITIES

Information from the Forced Marriage Unit for staff

The following information has been discussed with the ADASS Safeguarding Leads and is for the use of staff working with instances of forced marriage and people with learning disabilities.

Who are the Forced Marriage Unit?

The Forced Marriage Unit (FMU) is a joint Foreign & Commonwealth Office/Home Office Unit established in 2005. We are the Government's one-stop-shop for developing an effective government policy on forced marriage and we also work to assist and support victims of forced marriage through our casework. This can broadly be broken down into two areas: assistance work (helping victims to avoid a forced marriage, including British nationals who are taken overseas for this purpose) and immigration work (helping victims of forced marriage who have already been forced to marry and are subsequently being forced to sponsor the visa of their foreign national spouse).

Forced Marriage & Adults with Learning Disabilities: the current issue

The FMU are experiencing a growing number of referrals involving adults with learning disabilities who potentially lack capacity to consent to a marriage but who have married and are sponsoring the visa for their foreign national spouses to join them in the UK on the basis of this marriage. There are various motivations for forcing people with learning disabilities to marry, some of which include obtaining a carer for the person with learning disabilities or the marriage being seen as the only option for their future. However, the Mental Capacity Act 2005 is clear that there are certain decisions that cannot be made on behalf of another person and this includes the decision to marry. There is therefore no legal basis on which someone can agree to marriage or sexual relations on behalf of someone who lacks the capacity to make these decisions independently.

Forced marriage of people with learning disabilities may not be something that individual social work and social care practitioners and teams experience frequently. This information is therefore intended to assist in the safeguarding process. Seeking the expertise of and co-operating with the FMU is strongly encouraged so as to collectively make safeguarding most effective.

In December 2010, the FMU published multi-agency practice guidelines around forced marriage and people with learning disabilities, which very much focused on preventing forced marriages of adults with learning disabilities. These guidelines are available on the Adult Safeguarding Community of Practice. They have been extremely useful in tackling such cases. However, it has become clear that their existence is not well known across all adult social care and safeguarding staff. With the help of ADASS we now would like to establish clear mechanisms to specifically help those individuals with learning disabilities that have already been forced to marry.

Benefits of working together

By working closely with the UK Border Agency (UKBA) in the visa sections of British High Commissions and Embassies overseas, the FMU can help victims of forced marriage who are forced to sponsor the visa of their foreign national spouse. However, in cases of adults with learning disabilities, FMU are not in a position to assess capacity to consent

to a marriage. Therefore, we propose a mechanism where the UKBA can refer cases directly to Adult Social Services, and Adult Social Services are able to reciprocate by sharing information with UKBA. The FMU will continue to act as a point of contact between the UKBA and Adult Social Services. Contact will be made with the Director of Adult Social Services who will then forward it to the most appropriate person to deal with the issues.

It may be that the UK sponsor is already known to Adult Social Services and, in their opinion, does have capacity to consent to a marriage – in which case the visa will be processed in the normal manner. On the other hand, the UK sponsor may be known to Adult Social Services but, in their opinion, lacks capacity to consent to a marriage. In some cases it may be that the UK sponsor has never come to the attention of Adult Social Services but there is enough concern in the referral for them to investigate further. The key point is the need for a capacity assessment around the question of marriage.

If, in the opinion of social services, an individual lacks capacity to consent to a marriage, then that marriage must be viewed as a forced marriage. If the Adult Social Services department shares this information with the UKBA, the visa of the foreign national spouse can then be refused (or cancelled if visa has already been issued) legitimately under the immigration rules. Equally, it may also bring to the attention of Adult Social Services those individuals with learning disabilities who have never been known to them before, or at the very least are in need of more support.

We hope that this will enable us to together to ensure all individuals with learning disabilities are identified and assisted appropriately.

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