

INTERIM JOINT GUIDANCE BETWEEN THE POLICE SERVICE OF SCOTLAND AND THE CROWN OFFICE AND PROCURATOR FISCAL SERVICE ON THE INVESTIGATION, REPORTING AND PROSECUTION OF OFFENCES OF FORCED MARRIAGE

PURPOSE

The purpose of this guidance is to inform and assist the Police Service of Scotland (Police Scotland) and the Crown Office and Procurator Fiscal Service (COPFS) in the investigation, reporting and prosecution of offences of forced marriage contrary to Section 122 of the Anti-social Behaviour, Crime and Policing Act 2014.

This guidance has been jointly produced and approved by Police Scotland and COPFS in consultation with key stakeholders and is intended to supplement, rather than replace, any internal guidance produced by either organisation.

Having regard to the complexity of the issues that surround forced marriage and the difficulties often faced by victims (or those at risk) in seeking help and support, this guidance has been produced in order to:

- highlight the importance of working with third sector partners and in particular agencies supporting victims of forced marriage or those at risk of becoming victims;
- highlight the need to deal with all cases on an individual basis, appropriately tailoring the response of police and prosecutors to reflect not only the public interest in investigating crime and holding perpetrators to account but also balancing this with the needs of the victim. Integral to such an approach is an assessment of the risk posed by the alleged perpetrator(s) to that victim or to others; and
- identify best practice and obtain consistency of approach whilst taking into account the needs of individuals.

In dealing with these cases, we will treat all victims in a fair, sensitive and ethical manner. To meet the needs of the communities that we serve, it is recognised that this will include consideration of the diverse nature of our communities, such as Disability, Mental Health, Gender, Gypsy Travellers, Lesbian, Gay, Bisexual, Transsexual (LGBT), Race & Asylum, Religion & Faith and older people that comprise our society.

DEFINITION

The Scottish Government define forced marriage as follows:

“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 duress is involved. Duress can include physical, psychological, financial, sexual and emotional pressure,

threatening conduct, harassment, threat of blackmail and use of other means. It is also 'force' to knowingly take advantage of a person's incapacity to consent to, or understand the nature of, the marriage. Duress may be from parents, other family members and the wider community."

Section 122 of the Anti-social Behaviour, Crime and Policing Act 2014 comes into force on 30 September 2014 and creates an offence of forced marriage under the law of Scotland:

Section 122 (1) provides that:

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

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(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."

Specific provision is made where the victim lacks the capacity to consent by reason of a mental disorder. In these circumstances the offence is capable of being committed by any conduct carried out for the purpose of causing the victim to marry, whether or not it amounts to violence, threats or any other form of coercion.

In addition, section 122(3) creates an offence of practising deception with the intention of causing another person to leave the UK to travel to another country, with the intention that the other person is subjected to conduct that is an offence of forced marriage or would be an offence if the victim were in Scotland.

These offences will exist alongside the current offence of breaching a Forced Marriage Protection Order under the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011, which came into force on 28 November 2011.

BARRIERS TO REPORTING

Many victims of forced marriage may be reluctant to involve the police or to engage with the authorities for a number of complex reasons. These may include emotional bonds and loyalty to those that forced them into the marriage (often family/community members), fear of repercussions (including threats to their personal safety), child abduction, alienation of family and community and the stigma attached to police intervention in their affairs.

Investigators and prosecutors recognise that these situational vulnerabilities may result in the victims feeling unable to engage with the

police and authorities. As such, it is crucial for police and prosecutors to work with partner agencies supporting victims and those at risk, in order to build confidence in the role of the criminal justice system in tackling forced marriage.

BENEFITS OF WORKING WITH PARTNER AGENCIES

Given the pressures faced by many victims and potential victims, third sector partners can play an important/crucial role in supporting and assisting individuals to report forced marriage or pass on information to the police without speaking to that person directly. There are various organisations (e.g. Shakti and Hemat Gryffe Women's Aid) where victims or other witnesses can speak privately to a member of staff who will pass information on to the police.

The Police must work effectively with third sector organisations and raise a case by case liaison strategy, which should be tailored to build confidence and aid communication with the victim. This should focus on building the individual's trust and encouraging them to engage in the investigation and any subsequent action.

Third sector partners are fully aware of legislative requirements surrounding child and adult protection and their obligations when direct intervention is necessary.

INITIAL RESPONSE BY THE POLICE

The police will treat all incidents of forced marriage as high priority.

Every case of forced marriage will present a unique set of facts and circumstances and, in determining the appropriate response, officers must consider each case individually.

When the Police receive information or intelligence, which suggests that a person is or may be at risk of Forced Marriage, the priority will be the safety and well being of the victim/potential victim. Every report of forced marriage will receive a consistent response and will be investigated thoroughly. Where the report relates to a child victim, child protection procedures must be implemented. Every victim/potential will receive protection and safety advice and be offered referral to a relevant support service.

INVESTIGATION

When investigating reports of forced marriage the Police will have regard to the individual needs of victims and witnesses and will be aware that diversity of culture, religion, ethnicity, sexual orientation, gender or disability can present particular hurdles to reporting forced marriage. This can result in victims feeling unable to engage with police and authorities

Officers should also be mindful that forced marriage may be committed

with the knowledge or approval of other family or community members who might consider any disclosure by the victim as undermining the family/community `honour` .

Consideration will be given to whether additional support during the investigation would be of assistance to victims and witnesses. Where appropriate, officers will liaise with partner agencies when carrying out investigations and can refer victims who wish additional support.

During the investigation, the police will ensure that all possible lines of enquiry are sensitively but rigorously pursued and all available evidence is secured. Where appropriate, consideration will be given to the detention and interview of alleged perpetrators in order to secure further evidence. Where the perpetrator is not traced and is at large, he/she will be actively pursued until detained for interview or arrested.

The Police will record full details of all reports made. An assessment of risk will be undertaken on all occasions, which must consider all information available at the time. A safety plan will be raised and this will be allocated ownership. The plan will be reviewed and if necessary, refreshed as and when new information comes to light. Appropriate safety advice will be given and the victim will be provided with information regarding other support agencies. This will all happen regardless of whether or not the case is reported to the Procurator Fiscal.

Where appropriate local victim advocacy services are available, consideration should be given to a partnership approach in relation to victim safety.

The Police will have regard to the Scottish Government Guidance on the Joint Investigative Interviewing of Child Witnesses in Scotland and to the special measures available to child and vulnerable adult witnesses under the Vulnerable Witnesses legislation to assist them in giving their evidence in court.

Forced Marriage etc. (Protection & Jurisdiction) (Scotland) Act 2011

A Forced Marriage Protection Order (FMPO) is a civil order, which a Court may make for the purposes of protecting a person:

- from being forced into a marriage,
- from any attempt to force them into marriage, or
- where they have been forced into marriage.

The order may, amongst other things, restrict or require certain actions or prohibit certain actions in relation to the protected person. This could include, for example, a prohibition on threatening or violent conduct towards the protected person or any other person, or a requirement to take the protected person to a place of safety or to submit documents such as passports to the court.

An FMPO applies to any person named in the order and any other person who may become involved in forcing or attempting to force a person to enter into a marriage or who becomes involved in other respects (see s2(2)).

Examples of involvement in other respects includes (a) aiding, abetting, counselling, procuring, encouraging or assisting another person to force, or to attempt to force a person to enter into a marriage and (b) conspiring to force, or to attempt to force, a person to enter into a marriage (see s2 (4)).

A FMPO should always be considered when there is insufficient evidence of a criminal offence under s122 of the 2014 Act.

Examples

Example 1:

Fifteen-year-old Miss A finds a one-way ticket in her name within her family home. The ticket is for a flight to Pakistan. Miss A was unaware that she was going on a trip. Her parents recently asked her to put on her best dress and introduced her to an older man who came to the family home to have tea. The man seemed very interested in Miss A and she is concerned that her parents may be planning a marriage for her. They have not discussed marriage or mentioned the flight with her, but seem disinterested when she mentions staying on at school to complete fifth year.

In these circumstances, Child Protection procedures should be invoked and an investigation initiated to establish whether there is sufficient evidence of a criminal offence under s122 of the 2014 Act. Consideration should be given to obtaining a Forced Marriage Protection Order in the meantime. A FMPO can order the surrender of the protected person's passport, prevent a protected person being taken to any place outside Scotland and ultimately stop the protected person from going through a marriage ceremony. If the subsequent criminal investigation showed that there was insufficient evidence to charge the accused, the FMPO would remain valid and provide continued protection.

Example 2:

20-year-old Miss B confided in a work colleague that during the summer holidays her parents took her abroad for a family holiday and forced her to marry her first cousin. Miss B said that she had informed her parents that she did not wish to marry her cousin but that they had threatened her with violence and intimated that they would return to the UK without her and with her passport if she refused to go through with the marriage. Miss B feared they would carry out their threat so went through with a marriage ceremony to her cousin.

In these circumstances, where a person has been subjected to violence, threats or any other form of coercion for the purpose of causing that

person to enter into a marriage, the perpetrator/s should be investigated for committing an offence under section 122 of the Anti-social Behaviour, Crime and Policing Act 2014.

If the parents of Miss B had threatened her prior to travelling abroad both the civil and criminal legislation could have been utilised in tandem. Miss B could have made an application to a civil court for the purposes of obtaining a Forced Marriage Protection Order. If granted, this would have allowed the court to order the surrender of Miss B's passport, prevent her from being taken to any place outside Scotland and ultimately stop her from going through a marriage ceremony.

REPORTING OF CASES

In all cases of forced marriage where there is sufficient corroborative evidence of a crime – that is, evidence from at least two separate sources (not necessarily two eye witnesses) to establish that a crime was committed and the person accused was the perpetrator – the case will be reported to the Procurator Fiscal. This is regardless of whether or not the victim makes a complaint and this should be explained to the victim in a sensitive manner.

The Police will ensure that any forced marriage case reported to the Procurator Fiscal will include all pertinent information, including:

- the nature and circumstances of the offence, including any injuries sustained and full details of any medical treatment received;
- the results of all inquiries made, regardless of whether they yield additional evidence;
- full details of the relationship between the victim/accused and any witnesses;
- full details of any previous incidents between the victim/accused whether or not the subject of a previous report to the Procurator Fiscal;
- details of similar previous convictions;
- any interdicts or other court orders including whether a Forced Marriage Protection Order has been granted;
- bail conditions imposed on the accused in respect of previous court proceedings;
- any special risks which have been identified which impact on the victim and any children;
- any diversity requirements pertaining to the victim or witnesses, such as need for an interpreter, or other communication needs, any physical disability or any relevant cultural information;
- any views expressed by the victim to the police or a specialist victim advocacy service, including any views in relation to bail and/or special conditions of bail;
- information about any children resident in the household, including any details of their views (and the views of their parents) on giving evidence in court;
- any relevant additional information submitted on behalf of the victim by specialist victim advocacy services; and

- address and contact telephone number for the victim.

The report will consider how child and vulnerable witnesses may be best able to give evidence in the event of court proceedings. This should be consistent with the directions in the Lord Advocate's Guidelines to the Police on Providing Information on Vulnerable Adult Witnesses. Consideration should be given to alternative forms of identifying the accused where possible.

PROSECUTORIAL DECISION MAKING

When considering reports of forced marriage, the Procurator Fiscal must first assess whether there is sufficient corroborative evidence that a crime has been committed by the accused. Where there does not appear to be sufficient evidence in the report, but other evidence may be available, the Procurator Fiscal will contact an agreed police point of contact to advise and direct further inquiries.

If there is insufficient evidence in law, no proceedings can be taken.

If there is sufficient evidence in law, the Procurator Fiscal must consider what action is in the public interest. Assessment of the public interest will include the interests of the victim, the accused and the wider community. The factors which require to be taken into account in assessing the public interest will vary according to the circumstances of each case.

Whilst the views of the victim are an important consideration, it is not appropriate for the decision to prosecute to lie with the victim. Placing such an onus on victims would create a situation in which they were liable to threats, intimidation and manipulation not to proceed. It is important that the victim is aware that the final decision on whether or not to prosecute rests with the Procurator Fiscal.

PROSECUTION

Where there is a prosecution and the accused is to appear from custody or on an undertaking, the Procurator Fiscal will oppose bail where appropriate. If bail is not to be opposed, the Procurator Fiscal will consider whether it is appropriate to seek special bail conditions requiring the accused to reside at an alternative address and preventing the accused from approaching the home or contacting the victim or particular witnesses.

A breach of bail is a serious offence and the police should pro-actively monitor bail conditions as part of the safety plan. If this discloses a breach of bail, or if a specific complaint is made, the Police will investigate the matter thoroughly. If there is sufficient evidence of a separate criminal offence having been committed the police will report this to the Procurator Fiscal. The accused may be detained in custody pending appearance at court, or if appropriate, a warrant will be sought for the accused's arrest.

Where there are reasonable grounds to suspect that an accused person has broken or is likely to break any condition of bail imposed, the accused can be arrested and a bail review sought. There does not require to be corroboration of the conduct to arrest the accused. In such circumstances, the police must consider whether it is appropriate to arrest the accused and report the accused in custody to the Procurator Fiscal.

On receipt of any new information about the conduct of the accused towards the victim or any other significant change in circumstances, the Procurator Fiscal will consider the accused's bail status and seek a bail review where to do so is necessary for the protection of the victim.

If any significant change is made to the conditions of bail or an order is granted or revoked, VIA will inform the victim by telephone that day or within a maximum of 24 hours thereafter. This includes where the accused has been granted bail by the High Court. If VIA has been unable to contact the victim, the Police will be asked to do so.

INFORMATION AND SUPPORT FOR VICTIMS

All cases involving vulnerable and child witnesses will be referred to the Victim Information and Advice (VIA) service within COPFS. VIA assists vulnerable witnesses by:

- providing information about the criminal justice system;
- keeping them up-to-date on key developments in the case that affects them;
- helping them get in touch with organisations that can offer practical and emotional support;
- discussing any additional support that might help them, for example special measures when giving evidence; and
- where the victim wishes, helping to arrange a visit to court for them so that they know what to expect if the case goes to trial.

Police officers and VIA officers will provide victims with information about the available support agencies and will make onward referrals where appropriate. VIA staff will also refer vulnerable and child witnesses to Victim Support's Witness Service, consistent with the terms of the agreement between COPFS, Scottish Court Service and Victim Support Scotland.

Subject to any express local arrangements with specialist advocacy services, VIA will notify the victim of the outcome of the case, the grant of any bail, the terms of any special bail conditions or bail review. This will be done by telephone that day or within a maximum of 24 hours of the accused appearing in court. Where an accused has been released from custody and VIA has been unable to contact the victim, the Police will be asked to do so.

If any significant change is made to the conditions of bail or an order is granted or revoked, VIA will inform the victim by telephone that day or within a maximum of 24 hours thereafter. This includes where the

accused has been granted bail by the High Court. If VIA has been unable to contact the victim, the Police will be asked to do so.

DISCONTINUATION

Victims can sometimes feel unable to continue engaging with police and authorities due to situational vulnerabilities and may retract their original statements. They may be reluctant to give evidence for a number of reasons, including previous experience of the accused's conduct.

Where the police or VIA staff become aware of this, the Procurator Fiscal must be advised immediately. Before making any decision on discontinuing proceedings, consideration must be given to the particular circumstances of the case. It may be appropriate to meet with the victim or to instruct the police to interview the victim to explore, sensitively, the reasons for their retraction or reluctance. It must be established whether this is a result of threats or pressure from the accused or any other person. The victim should be advised of the available support and offered referral to a relevant support service.

The final decision to discontinue proceedings rests with the Procurator Fiscal and this decision will only be made on the instruction of NSCU.

POLICY INFORMATION

Further information is available from:

Crown Office Policy Division on **0131 226 2626** or at
PolicyDivision@copfs.gsi.gov.uk

Police Scotland Public Protection Unit on **0131 311 3642** or
SCDHBVCoordinatorEdinburgh@scotland.pnn.police.uk