

CULTURE, COERCION AND CONSENT

Best practice to secure
forced marriage convictions

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Abstract

Forced marriage (FM) affects many communities in the UK and has far-reaching consequences for individuals and society. In light of the UK's new FM legislation, introduced in 2007 and 2014, this briefing analyses the UK's first successful FM prosecution of a mother who forced her daughter into marriage overseas. It highlights the importance of understanding the role that culture (including family values and norms) plays in FM, both in terms of achieving successful prosecutions and providing effective assistance to victims. This understanding is best developed by involving intermediaries in police investigations and using expert witnesses in the courtroom. The briefing also explores how expert witnesses and intermediaries help realise the new legislation's potential to empower victims.

Key words:

expert witnesses, forced marriage, coercion, consent, policing, best practice.

Key messages:

- FM often takes place in cultural and familial contexts with patriarchal power systems. A stronger understanding of these factors is key to developing best practice that can assist victims more effectively.
- As FM cases rely on victims' feeling empowered to come forward, providing specialist intermediaries to support both victims', and the police during police investigations and criminal proceedings can be a critical element.
- Expert witnesses play a vital role in helping legal and law enforcement practitioners understand the religious and socio-cultural context (e.g., different marriage practices and

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traditions) underpinning individual FM cases, and thus ensure that effective prosecutions can be brought.

Introduction

A forced marriage (FM) is an illegal and invalid marriage that takes place without the consent of one or both parties, often as a result of coercion. The Oxford Dictionary defines coercion as “persuading” an individual to do something through two important means: (a) acts of force or active pressure, and/or (b) physical and/or non-physical forms of explicit and/or implicit force and threats, particularly of a psychological nature.

Coercive behaviour is now legally recognised in the UK as a criminal offence and a form of domestic abuse in an intimate or family relationship (s.76 of the Serious Crime Act 2015). This Act provides statutory recognition that a perpetrator can cause serious emotional and psychological harm even when the abuse stops short of physical or sexual violence. The statutory guidance on this legislation acknowledges that such behaviour is primarily targeted at women and girls, and is “underpinned by wider societal gender inequality” (Home Office 2015: 7).

Forced marriage legislation in England and Wales

Efforts to counter FM are becoming increasingly visible in British criminal justice. From June 2014, FM became a specific offence in England and Wales under s.121 of the Anti-Social Behaviour, Crime and Policing Act, and carries a maximum seven-year prison sentence (Gill and Harvey, 2017). Previously, prosecutors used more general legislation covering false

imprisonment, kidnapping and violence for FM cases. In civil legislation, the Forced Marriage (Civil Protection) Act 2007 enables courts to issue Forced Marriage Protection Orders (FMPO), a form of injunction that prohibits persons from committing acts that might lead to a named individual being forced into marriage. Breaching the terms of an FMPO is a criminal offence carrying a maximum five-year sentence. Pursuant to s.63A (1) of the Family Law Act 1996, a potential victim, a “relevant third party” or any other person with the court’s leave (or the court itself) may seek an FMPO to protect a potential victim or someone who has been already forced into marriage. Between 25 November 2008 – when the legislation was introduced – and 31 December 2018, 1943 FMPOs were applied for: of the 1856 granted, 1598 applied to women.

The key issue here is that victims and potential victims may come to the attention of authorities in a range of ways involving a variety of evidence sources, some confidential. It is vital that, despite these differences, professionals are able to recognise indicators of, and risk factors for, FM so that they can effectively evaluate potentially disparate, incomplete and even inconsistent evidence. Notwithstanding these challenges, two successful FM convictions (*Regina v RB* [Birmingham] and *Regina v M and B* [Leeds]) were recently secured in the UK after the victims disclosed their situation to the authorities.

Regina v RB came before Birmingham Crown Court on 30 April 2018. The defendant, the mother of a teenage girl, was prosecuted under two FM-specific subsections of the Anti-Social Behaviour, Crime and Policing Act: practising deception to cause the victim to leave England and Wales, pursuant to s.121(2); and using coercion to force her daughter into marriage upon arrival in Pakistan (the Act has extra-territorial jurisdiction), pursuant to s.121(1). Throughout the trial the defendant denied



the charges, asserting that her daughter had “agreed” to the marriage and was “ready” for it. However, on 22 May 2018, the defendant was found guilty on two counts of FM, for which she was sentenced to three-and-a-half years, and on one count of perjury, for which she was sentenced to one additional year (Summers, 2018).

This case not only illustrates the key elements in a successful FM investigation, but shows how a conviction was secured using the new FM-specific legislation. It is a powerful demonstration of how important it is to understand the role cultural and family dynamics, traditions and values play in FM cases, and how the new legislation can empower victims.

Prosecuting forced marriage cases

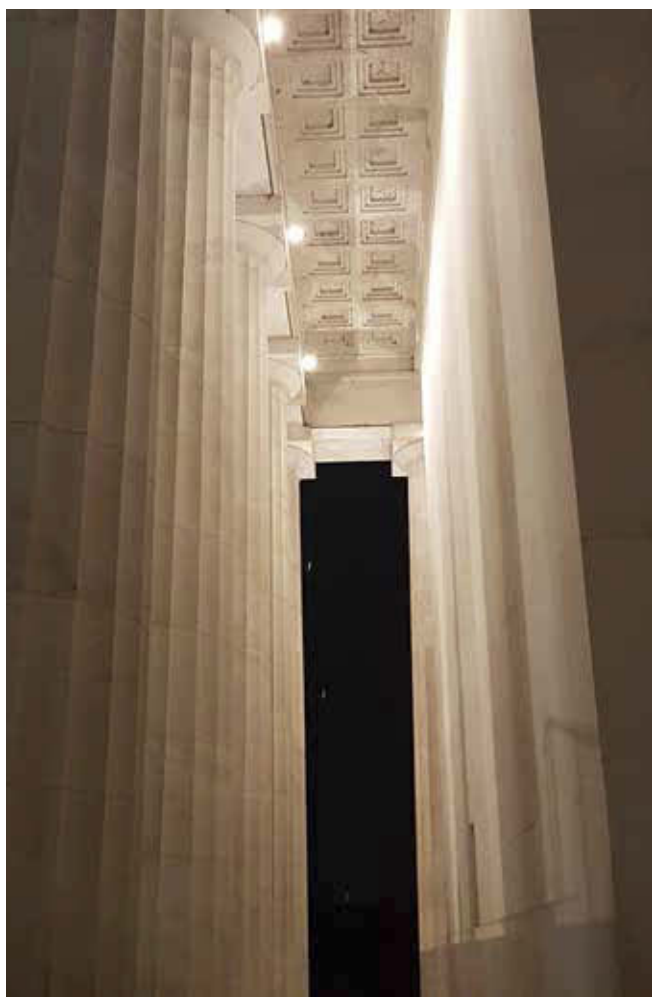
The role of expert witnesses

The successful prosecution of *Regina v RB* depended on strategic use of evidence, trusting relationships between the police and the victim, and expert witness testimony. The Crown Prosecution Service (CPS) was conscious of

how integral it was to explain to the court the cultural and religious pressures, nuances and unwritten rules in operation in terms of how and why the victim was forced into marriage; the prosecution also carefully delineated the socio-cultural complexities of the dynamic between the defendant and the victim. The first author of this briefing provided an expert report for the prosecution, explaining the victim’s socio-cultural background and how it may have affected her belief system, as well as how a marriage would have been organised culturally, socially and legally within the family and community into which the girl’s mother had entered on her second marriage.

Having experts help legal and law enforcement practitioners grasp the socio-cultural context and marriage traditions of relevant countries, cultures and religions proved invaluable in this case, as it has in similar cases, such as that of Shafiea Ahmed (Gill, 2017). In the investigation and trial of *Regina v RB*, experts were able to shed light on broad issues of cultural life in Pakistan and the Pakistani diaspora, offering insights into factors such as gender inequalities, honour systems, patriarchal values and traditions, immigration concerns, and how and why control over female sexuality

manifests in general and specific forms of gender-based violence. Knowledge of these factors was critical to grasping the effectiveness of the coercive means the defendant used in this case.



In court, the victim – without expressing it directly – revealed the genuine sense of powerlessness she experienced in the environment in which her mother had coerced her into marriage between 2012 and 2016. Thus, the jury was able to understand why, even though the victim signed the marriage certificate, attended the wedding party dressed immaculately and participated in a photo shoot with her husband, she did not choose to do any of these things of her own free will. Rather, she was unable to challenge them because her mother consistently undermined her daughter's attempts to assert her own agency by applying various forms of coercion in both the UK and Pakistan (Gill, Cox and Weir, 2018; Munro 2010). For instance,

the victim was afraid of the possible consequences of challenging her mother in Pakistan, including potential abandonment and the certainty that the wider community would see her rejection of the marriage as a source of considerable shame for the entire family. It is not the existence of choice, but the ability to freely engage in the *process* of choice, that is key to determining consent versus coercion (Gill and Harvey, 2017). In this case, the mother actively interfered in this process by using threats and other coercive and deceptive measures, thus ensuring that her daughter was not in a position to consent.

Achieving best evidence: Lessons for the police in victim care and using intermediaries

A fundamental challenge in preventing (or at least improving outcomes in) FM cases is victims' inability to access appropriate services. Although the police in *Regina v RB* directed the victim to charity-sector partners, their skilled intervention was hampered by the fact that the situation had been ongoing for so many years; this meant that the victim required intensive, long-term assistance to address the trauma and other difficulties caused by her experiences between 2012 and 2016. A further complication was that the victim displayed challenging behaviours; she was particularly suspicious of the police, lawyers and the various legal processes involved in the case. The victim chose to provide her pre-trial evidence in the form of police statements rather than a pre-recorded interview, and her initial statement was taken without the benefit of an intermediary. After the defendant was charged, the CPS requested a conference with

the police during which they recommended that an intermediary be engaged to assess the victim, report on her vulnerabilities and advise the police on how they could most effectively obtain further evidence through additional statements. Counsel also directed the police to collect and collate third-party materials, including documentation from social services, the victim's school, GPs and children's services to create a full picture of the victim and her situation. Given that the victim's reliability and credibility would inevitably be called into question by the defence, this strategy of proactive disclosure management and active case-building meant that the police and CPS could establish a comprehensive understanding of the victim's experiences from 2012 onwards.

Up to 2016, the victim underwent a high level of intervention from statutory services. Gathering, collating and assessing all this material proved key to the successful prosecution in this case; however, the work only commenced after the October 2016 investigation began. The materials gathered provided rich evidence of a controlling mother struggling to deal with her daughter's burgeoning sexuality and the impact of her 'solution' on an already vulnerable child; the victim's response of engaging in risky behaviours cemented the defendant's belief that the best way to control her daughter's sexuality was to formalise the 2012 'marriage' as soon as her daughter turned 18.

The police worked hard to build trust with the victim, separating their investigative and safeguarding roles by appointing a police liaison officer. This action enabled investigators to focus on their enquiries, while a police liaison officer took ownership of the victim's care. The police liaison officer provided consistent and reliable ongoing support for the victim and, through continued contact and clear boundaries, helped develop her confidence in the legal process – this was essential to

the victim being able to remain involved throughout the trial. Considerable care was taken to handle interactions appropriately – a contact protocol was devised by the police to ensure transparency and full compliance with disclosure obligations.



The victim told the court that when she arrived in Pakistan, her mother convinced her it was unsafe for her to leave the house alone because she was a Western female. She also explained to the court the psychological impact of being part of a new family group with different social rules and behaviours, particularly in terms of gender roles and expectations. She had no money, her mother held her passport and she did not know where she was geographically – only that she was a considerable distance from the airport. Without access to her normal support structures, the victim did not understand which institutions she could seek

help from. Moreover, she had no independent internet or phone access, relying instead upon sporadic and surreptitious use of her mother’s phone. Her inherent lack of self-confidence and low self-esteem were major factors in how her mother was able to coerce her into marriage in this situation. However, her mother also refused to listen to her daughter’s protests, threatening to disown her and expressing disappointment that she did not want to do this “one small thing”.

The victim’s account of the ‘marriage’ celebrations and process made a strong impact on the jury’s verdict, including on the count of perjury; naturally, this also had a significant influence on how the jury appraised the veracity of the defendant’s testimony as a whole.

Key learnings

Protecting and supporting victims

This case demonstrates that one of the key challenges for prosecutions is overcoming the barriers preventing victims from reporting both FM itself and concerns about their risk of FM (Gill and Harvey, 2017). Proper awareness of, and effective responses to, reports must become the norm. In this case, the victim did not report what was happening to the authorities herself; instead, her sister who brought the FM to the attention of the relevant statutory agencies. However, although children’s services actively considered applying for an FMPO in 2016, they did not do so, and did not make the police aware of their concerns. Even when the police were finally informed, this information came through a third party. Indeed, the successful prosecution was possible largely because the police were able to access considerable evidence of the defendant’s alarming behaviours because the victim had been in the care system. However, women and girls without access to support services, those whose family members and/

or community are complicit, and those whose lives do not intersect with statutory agencies are unlikely to be identified by third parties – in these cases, victim disclosure offers the only realistic prospect of assistance. As FM can also be committed by British citizens and residents who travel to another jurisdiction to marry, serious questions arise as to how those whom



they ‘marry’ may be identified and informed of their fundamental right to choose their marriage partner. Thus, moving forwards, best-practice guidelines must be developed to improve statutory agencies’ recognition of risk factors and warning signs to increase the rate of prevention, or at least early intervention.

Understanding the role of socio-cultural factors and transnational elements

The fact that FM is a mechanism through which one person is controlled by one or more others is central to understanding the nature of this crime. While the desire for control plays out in many different ways, FM most often arises in families and communities in which patriarchal power systems are the norm (Gill, 2017). The defendant in *Regina v RB* is part of the Pakistani diaspora in Britain and maintained close links with Pakistan at

failure of UK statutory agencies to robustly address the risks they identified in early 2016. Illuminating and explaining this context for the jury relied on partnership between the expert witness (i.e., the first author: see Gill, 2017) and the prosecution team.

To bolster the likelihood of further successful FM prosecutions, victims must be empowered to come forward. Support services must also become more attuned to FM dynamics in order to adequately assess and address risk factors. There is a general reluctance in children's



the time of the trial; her second husband is a Pakistani national from the Punjab, a place she visited regularly and in which she had a home. The defendant's background and the relevant socio-cultural norms, values and traditions are crucial to understanding her decision to force her daughter to marry a Pakistani national overseas. Indeed, the defendant was only *able* to commit these offences through her knowledge of the local community in Pakistan, her extended family network there and the

services to use care proceedings for those older than 16 (Dickens, Masson, Garside, Young, Bader, 2019); since most victims in FM cases are over 16, this approach needs to change for those at potential risk of FM and related crimes (removed for review). There is also an assumption that many young people leave their family home when they try to escape abuse. However, it is rare for South Asian teens and young adults to move out of the family home before marriage; doing so often has long-

term implications for family and community acceptance and even the young person's ability to marry within the community (Mayeda, Cho and Vijaykumar, 2019). Understanding FM and the contexts in which it is most likely to occur will better equip services to offer victims the support they require. It will also enable them to recognise the specific forms of risk and coercion involved and the particular ways victims may respond because of their socio-cultural values and experiences (removed for peer review).

Conclusion

In this case, the prosecution argued that the defendant's compliance with the legal proceedings was based on her expectation that her daughter would not disclose the FM because of her love for, and desire to protect, her mother. This belief was initially borne out by the victim's stance upon her return from Pakistan in 2012 and initially in 2016, demonstrating that one of the key barriers to reporting and prosecution is the strength of familial loyalty and affection. Despite the defendant's belief that her daughter would not testify against her, she eventually did so with the help of an intermediary; this testimony led to the defendant being convicted of two offences of FM and one offence of perjury, for which she received a total sentence of four and a half years' imprisonment.

When an investigation and subsequent trial are handled well, as they were in this case, the legal system can both protect and empower women. This sends a strong message that women who are subjected to deception and coercion in the process of being forced into an unwanted marriage will be supported if they feel able, or are enabled, to challenge these practices. A key lesson is the need to improve victims' awareness of, access to and confidence in the protections of criminal and civil law. In this case, the



sensitive way in which police officers handled the victim, the early investigative advice provided by an experienced CPS lawyer, the early involvement of counsel, and the clear division of safeguarding and investigative functions were critical to securing a successful prosecution.

The case also demonstrates the value of multi-agency collaboration, including turning to other sectors (including the charity sector and academia) for the expertise needed to shed light on the cultural, social, religious and legal

contexts of the actors involved. Following her mother's conviction, the brave and courageous victim spoke of her pride at having participated in the criminal proceedings, demonstrating the value of enabling her to be part of challenging the serious offences her mother had committed against her. However, better understanding of risk factors and warning signs could have enabled statutory agencies to intervene in 2012, thus protecting the victim from years of additional trauma. While successful prosecutions are vital, the best outcomes are when FMs are prevented in the first place by empowering those at risk so that they can avoid victimisation by accessing support and protective measures such as FMPOs.

Selected references

Dickens, J., Masson J., Garside, L., Young, J. and Bader, K. (2019) Courts, care proceedings and outcomes uncertainty: The challenges of achieving and assessing "good outcomes" for children after child protection proceedings., *Child and Family Social Work*, 2019;1-8.

Gill, A.K., Cox, P., Weir, R. (2018) 'Honour'-based Violence/Abuse, Forced Marriage and Female Genital Mutilation, *Howard Journal of Criminal Justice*, 57, 4: 576-595.

Gill, A.K., Harvey, H. (2017) Examining the impact of gender on young people's views of forced marriage in Britain, *Feminist Criminology*, 12: 1, 72-100.

Gill, A. K. (2017) Women murdered in the name of 'honour'. *The Handbook on Homicide*, in Wiley-Blackwell Series of Handbooks in Criminology and Criminal Justice, Wiley Blackwell.

Mayeda, T., Cho, S., and Vijaykumar, R. (2019) Honor-based violence and coercive control among Asian youth in Auckland, New Zealand, *Asian Journal of Women's Studies*, 25:2, 159-179.

Home Office (2015) Controlling or Coercive Behaviour in an Intimate or

Family Relationship: Statutory Guidance Framework. London: Home Office.

Munro, V. (2010) From consent to coercion: evaluating international and domestic frameworks for the criminalization of rape. In: McGlynn, C. and Munro, Vanessa, (eds.) *Rethinking Rape Law: International and Comparative Perspectives*. Oxon, U.K.; New York, N.Y. Routledge, pp. 17-29.

Summers, H. (2018) Birmingham woman jailed for duping daughter into forced marriage. Available at: <https://www.theguardian.com/uk-news/2018/may/23/birmingham-woman-jailed-duping-daughter-forced-marriage>

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