

Good afternoon to everyone. My name is Melanie Rice and I have been a practicing family barrister in Northern Ireland for the past 13 years.

When I was approached by the Bar Council of Northern Ireland and asked to speak to you all today on the topic of the legal framework and case law on forced marriage, honour based abuse and FGM in Northern Ireland, I thought it would be a really good idea to canvass the views of my colleagues at the Bar on this issue. When I spoke to my colleagues and informed them that I would be addressing you all on these three areas, there were two notable reactions that I received. Firstly my colleagues looked at me very surprised and said “Melanie, apart from the case of G and D in 2010 which concerned forced marriage, have there been other cases concerning forced marriage, honour based abuse and FGM in NI since?”. When I replied that “no, the only case that we have had in Northern Ireland to date is that of G and D in 2010”, my colleagues second response was to say “good luck, that’s going to be a very short talk”.

To be fair to my esteemed colleagues, anyone can be forgiven for thinking that because Northern Ireland has only had one case on the issue of Forced Marriage that we somehow lag behind the rest of the UK and Europe on these issues but this could not be further from the truth. Whilst we may not have a wealth of case law on the issue of Forced Marriage or Honour Based Abuse or any case law on FGM, that does not mean that we are not fully equipped (by way of legislation, safeguarding guidelines and policies and through the legal profession) to deal expeditiously with same when these issues do arise.

About now you are all probably thinking – ok so Northern Ireland hasn’t got much experience in terms of case law but what is the legal framework in Northern Ireland and how robust is it to protect individuals from these specific forms of abuse.

In respect of Forced Marriage in Northern Ireland, let me take you back to the period of 2012 - 2014. The Forced Marriage Protection Unit website gave statistics in 2012 in respect of Forced Marriages in Northern Ireland and it assessed that 0.2% of the UK cases reported to them concerned Northern Ireland. In comparison London was sitting on a figure of 21% and Wales and Scotland at 1% each. By 2014 figures obtained from the Northern Ireland Statistics and Research Agency highlighted that 68 children were married in 2014 and of these 42 were girls and 26 were boys. Under the Marriage (NI) Order 2003 a child aged 16 or 17 years of age may be married with the consent of their parents or legal guardians. I acknowledge that this does run contrary to the UN Committee on the Rights of the Child recommendation which is to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys.

In respect of Forced Marriage and legislation, prior to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act Northern Ireland 2015, there was no specific provision for a criminal offence of Forced Marriage in Northern Ireland. There were only civil remedies available to victims under The Forced Marriage (Civil Protection) Order 2007 and also by virtue of the High Court’s inherent wardship jurisdiction. The remedy available under The Forced Marriage (Civil Protection) Order 2007 was and is that of the Forced Marriage Protection Order. It was this Order that was used in the case of G and D 2010 NIFAM 6.

G and D concerned two children, both female, British and of Pakistani descent. At the time of the Hearing they were aged 12 and 14. In 2007 when the children were aged 10 and 11, a Trust brought wardship proceedings on the basis that the parents had arranged for G and D to travel to and remain for a number of years in Pakistan so that they could be educated in that country. The Trust alleged that this was a pretext, that no arrangements had been made for their education and in reality, based in part on the previous experience of the forced marriages of their brothers S and T in 2005, that once in Pakistan they were to be isolated, attended to and prepared so that they also could be forced to marry. Wardship orders were the only remedy at the time that the Trust brought the case before the High Court as the Forced Marriage Civil Protection Order 2007 did not come into force until the 25<sup>th</sup> November 2008. Wardship orders were made in relation to both children giving care and control to the Trust however the matter remained in that way for some considerable time (3years) until the mother contended that there had never been a final hearing in relation to the wardship application. The mother sought the order discharged. On the hearing of that application and in the alternative, the Trust invited the court to make an order of its own motion under Schedule 1 of the Forced Marriage (Civil Protection) Act 2007. The children were represented by the Official Solicitor and it must be noted that the only welfare concern in the case was the risk of Forced Marriage in respect of the children. The children were interviewed by the Official Solicitor and much of Mr Justice Stephen's judgment deals with the contents of that interview and the concerns about the veracity of the children's wishes and feelings.

Of particular legal note are the comment of Mr Justice Stephens in this case – Mr Justice Stephens made it clear in that case that the requirement in para 1(2) of Section 2 of the Forced Marriage Civil Protection Act 2007 is to have regard to all the circumstances. The relevant circumstances in each individual case have to be established by the party seeking to obtain the order on the balance of probabilities. The circumstances will be infinitely variable from case to case. For instance in this case the circumstances included a rare devastating hereditary disease suffered by the father who was a first cousin of the mother, which is to be seen in the context that the brothers S and T were forced to marry their first cousins and the Trust's contention that there is a prospect that G and D could also be forced to marry their first cousins. The nature and extent of the precautions are to be proportionate to the circumstances and in this case a consequence of a forced marriage would not only have been a gross abuse of the rights of G and D but if the forced marriage was to a first cousin it could have had a devastating impact on the health of any their children. The Judge further stated that whilst circumstances will be infinitely variable one circumstance has to be the existence of a risk of a forced marriage of the person to be protected either to a particular individual presently identifiable or a general risk arising at some unspecified future date.

Mr Justice Stephens also noted that the provision of paras 15(1) & (2) of Schedule 1 provides that the Schedule **does not affect** any other protection or assistance available to a person who is being, or may be, forced into a marriage and in particular, it does not affect, amongst others, the inherent jurisdiction of the High Court, any right to a non-molestation order under the Family Homes and Domestic Violence (Northern Ireland) Order 1998 or any civil remedies under the Protection from Harassment (Northern Ireland) Order 1997. Making a forced marriage protection order does not preclude, amongst others, a wardship order, a non-molestation order or an order prohibiting harassment.

Since 2015 however Northern Ireland now has the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act Northern Ireland 2015. Section 16 of the 2015 Act finally creates the criminal offence of forced marriage in Northern Ireland. The offence is committed where a person uses violence, threats, or any other form of coercion, to cause

another person to enter into a marriage and the person using the violence or threats, knows or ought to know that their conduct may cause the other person to enter into marriage without free and full consent. The offence can be committed where violence or threats are used against someone other than the person entering into the marriage. It is irrelevant whether the marriage ceremony is legally binding in Northern Ireland or elsewhere. The offence is also capable of being committed by any conduct designed to cause a person lacking mental capacity to enter into marriage, whether or not that conduct is violent, threatening or amounts to coercion. A further offence of practicing deception with the intention of causing another person to leave the UK to be subjected to forced marriage is created under section 16(5) of the Act. This applies where there is an intention on the part of the party practising the deception that the person being induced to travel outside the UK will be subjected to forced marriage outside the UK.

The offences under section 16 apply, if at the time of conduct or deception, either the victim or perpetrator is:

- i. In Northern Ireland; or
- ii. Habitually resident in Northern Ireland; or
- iii. A UK national

The maximum sentences for the offences created under section 16 are:

- a. 6 months imprisonment and/or £5,000 fine if tried summarily
- b. 7 years imprisonment if tried on indictment

In Northern Ireland all agencies therefore with responsibility towards safeguarding and promoting the welfare of children must comply with The Right to Choose: Statutory guidance for dealing with forced marriage published by the Department of Finance and Personnel in April 2012 to protect persons from being forced into marriage against their will. This guidance is designed to assist with the operation of the Forced Marriage (Civil Protection) Act 2007 (the 2007 Act) and to ensure that the protections which the Act offers are widely promoted in Northern Ireland. Any child/young person considered to be at risk of a forced marriage will be considered a child in need and assessed accordingly by Social Services.

In respect of Honour based violence within Northern Ireland, to the best of my knowledge we do not have any specific legislation in Northern Ireland akin to that for Forced Marriage. No one can be in any doubt that Honour based violence is likely to be occurring in Northern Ireland given Northern Ireland's migrant population. As Honour Based Violence is included in the definition of domestic and sexual violence and abuse the legislation that most practitioners will turn to is the Family Homes and Domestic Violence (NI) Order 1998. The remedies to protect a victim of Honour Based violence are similar to those for Forced Marriage, that is - Non Molestation Order, Protection from Harassment (NI) Order 1997, inherent jurisdiction of the High Court or criminal offences e.g. assault. In Northern Ireland there is the Domestic Abuse, Stalking & Harassment and Honour Based Violence (DASH) Risk Assessment which is used by Social Services in such cases. Whilst HBV would be considered 'high risk' in any assessment, it is important to identify the specific risk factors associated with that particular individual's circumstances and what is clear is that any person working with victims of honour based violence need to be aware of the 'one chance' rule. This includes the legal profession. That is, they may only have one chance to speak to a potential victim and thus they may only have one chance to save a life. This means that

everyone, including legal professionals and those working within statutory agencies need to be aware of their responsibilities and obligations when they come across these cases. If the victim is allowed to walk out of the door without support being offered or protection sought from the Court, that one chance might be wasted.

In respect of FGM, on the 21<sup>st</sup> April 2015 the NI Assembly was asked to confirm how many cases of FGM had been reported to the Trust boards in Northern Ireland and which Trust Boards had been involved. The response was none. – the Female Genital Mutilation Act 2003 as amended by the Serious Crime Act 2015 applies to Northern Ireland. Most of us present are familiar with Protection orders and in particular to FGM protection orders (FGMPOs).

The FGM Protection Orders came into force in Northern Ireland on the 17 July 2015. Since the 17<sup>th</sup> July 2015 and continuing to date, there have been no applications for FGM Protection Orders before the Northern Ireland Courts. In Northern Ireland an FGM protection order is a civil measure which can be applied for through a family court. In Northern Ireland, such an application is likely to be commenced in the High Court given the seriousness of the application. The FGM protection order offers the means of protecting actual or potential victims from FGM under the civil law. Breach of an FGM protection order is a criminal offence carrying a sentence of up to 5 years in prison. As an alternative to criminal prosecution, a breach could be dealt with in the family court as a contempt of court, carrying a maximum of 2 years' imprisonment.

Applications for an order can be made by:

- the person who is to be protected by the order
- a relevant third party (such as the local authority)
- any other person with the permission of the court (for example, teachers, health care professionals, police, family member).

FGM protection orders are unique to each case and contain legally binding conditions, prohibitions and restrictions to protect the person at risk of FGM. These may include:

- confiscating passports or travel documents of the girl at risk and/or family members or other named individuals to prevent girls from being taken abroad
- ordering that family members or other named individuals should not aid another person in any way to commit or attempt to commit an FGM offence, such as prohibiting bringing a “cutter” to the UK for the purpose of committing FGM.

The court can make an order in an emergency so that protection is in place straightaway. FGM protection orders came into force on 17 July 2015 and apply to England, Northern Ireland and Wales.

For those working with children be it in private, independent or statutory organisations, the Co-operating to safeguard children and young people in Northern Ireland document, by the Department for Health in 2016 provides the overarching policy framework for safeguarding children and young people in the statutory, private, independent, community, voluntary and faith sectors. This document outlines how communities, organisations and individuals must work both individually and in partnership to ensure children and young people are safeguarded as effectively as possible.