



PREDATORY MARRIAGE: WHAT CAN WE DO TO PREVENT IT?



Policy Brief

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Key Insights

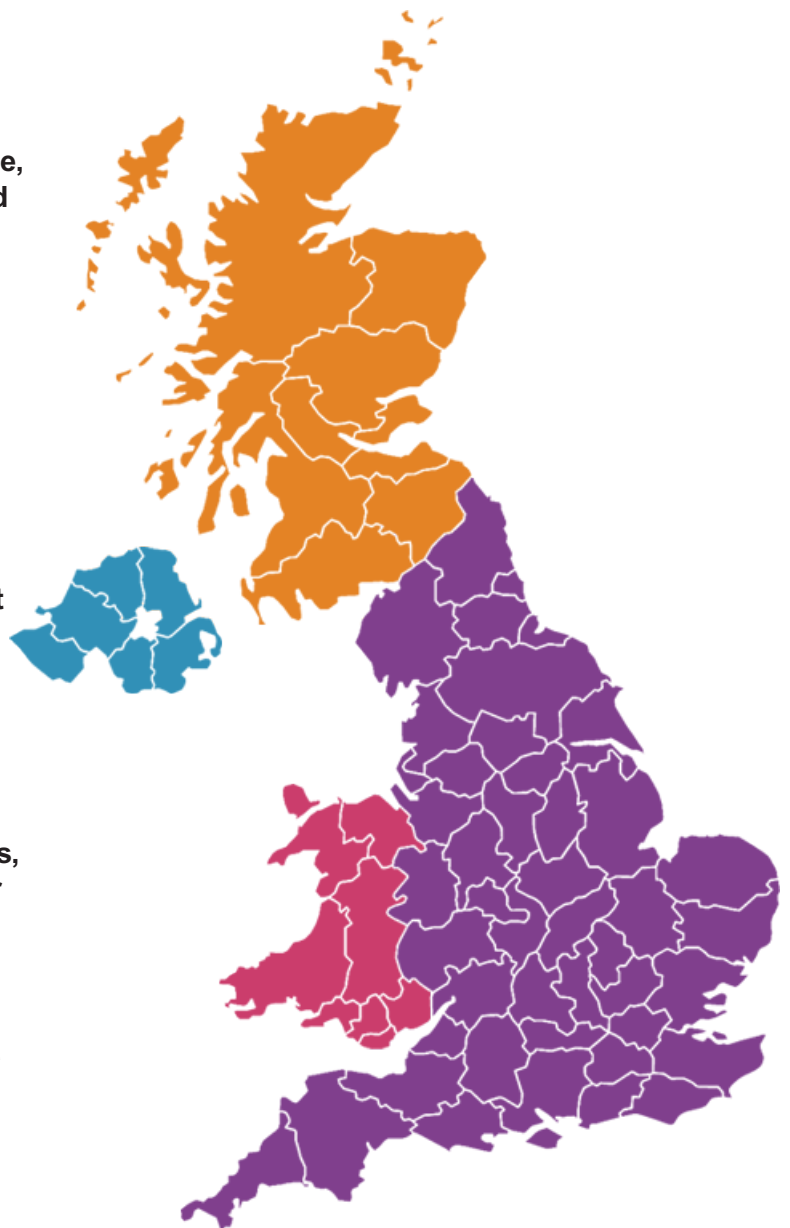
Predatory marriage is a form of economic abuse, wherein marriage is a cover for exploitation and economic gain.

It can have a devastating psychological and mental health impact on family members and friends of the victim.

The current legislation around Wills means that marriage will revoke an existing Will, and transfer the estate and assets to the spouse.

Predatory marriage may take place in secret, between two partners with large age differences, and wherein the older victim may be wealthy or lack mental capacity.

Current safeguards are not sufficient to protect older people, especially those suffering from dementia or without a capacity to marry.



Recommendations

Change the law such that a marriage does not automatically revoke a Will

The current law is not well-known (Wills Act 1837, section 18(1)), and causes problems. When someone marries, the current rule may totally ignore their previously stated wishes. Changes to a Will should be explicitly made by the person concerned. Hourglass should push for changes to this legislation.

Create an offence of Predatory Marriage.

The law already considers that it is an offence to marry someone who does not have the mental capacity to agree. But the offence is currently “Forced Marriage”: which we have seen causes even professionals to misunderstand when an offence has occurred.

Publish Notices/Banns on the internet.

The purpose of the Notices/Banns is to publish an intention to marry. The best way to do this is on the Internet. At present marriage Notices are published only physically within the Register Office and Banns in the church, an online database is essential to allow for increased transparency.

Institute advanced training for marriage registrars to help identify signs of dementia or a lack of mental capacity to marry.

Registrars are currently given inadequate training or help in assessing whether a person is fit to marry. There needs to be advanced training provided to marriage registrars that covers aspects of safeguarding, capacity under the Mental Capacity Act, and types of dementia.

Ensure Registrars will stop a marriage ceremony if there are any doubts.

Registrars will stop a marriage if they think there is some problem. There need to be clear national procedures on when this must be done, plus consequences for the General Register Office if it does not happen.

Check for Power of Attorney before marriage.

Where a person has given someone Power of Attorney to look after their affairs, the pre-marriage checks should ensure that the person concerned is aware of the marriage before it takes place, so they can take whatever action they deem appropriate.

Record the interviews and marriage ceremony.

There is currently no evidence kept at either the pre-marriage interview or the ceremony. This makes it impossible to prove fraud. It would be trivial and inexpensive to record both the interview and the ceremony itself and keep the recordings for a suitable length of time. To allow individuals to speak freely, the interview recordings should be regarded as private.

Require separate interviews.

Currently Registrars are supposed to conduct the pre-marriage interviews separately. But this is only guidance. We believe separate interviews should be required in order that the marriage is valid. This is vital for many situations involving vulnerable people.

Policy Problem:

Predatory marriage is a form of economic abuse that disproportionately impacts older people. A typical example is when an older person with dementia or other cognitive impairment is taken advantage of by someone younger than them. These types of relationships can be kept secret from a person's loved ones, who may only become aware of the marriage after their death. In England and Wales and Northern Ireland, marriage automatically revokes any previous wills. After death the spouse will often receive the majority or all of the deceased's estate however short the marriage. Inheritance law in Scotland offers some further protection, because getting married does not automatically cancel a will, however any spouse can still make a claim to the deceased's estate, but this is restricted to either a one half or one third cash sum of the deceased's "movable property" (cash, personal property, investments), and no claim can be made on the family's home.¹

As with all aspects of economic abuse, the impact of predatory marriage on the families and friends of the older victims can be devastating, the exploitation of a vulnerable victim by the perpetrator can cause trauma, loss of self-esteem and confidence, familial breakup, and mental health issues such as depression, PTSD, and anxiety.²

According to Silvia Fraga Dominguez et al's recent study investigating the help seeking experiences of "concerned persons" in England – 85% of those studied (n=498) expressed that they had suffered a psychological or mental health impact from trying to support or help older family members or friends who had been victims of abuse.³

As noted above, as it stands, marriage will revoke a will. Therefore, unless an individual makes a further will, the law of intestacy decides how that individual's assets will be divided.

In England and Wales,

- If the deceased person dies leaving an estate less than £270,000, the entire estate will pass to the surviving spouse.
- If the deceased person dies leaving an estate worth more than £270,000, the surviving spouse will receive: all personal property belonging to the deceased, the first £270,000 of the estate; and half of the remainder of the estate – if the deceased has surviving children.
- If the deceased person has no surviving children, the entire estate will pass to the surviving spouse.⁴

In Northern Ireland, the rules are similar.

- If the estate is worth less than £250,000, the spouse or civil partner of the person who has died will get everything.
- If the person who has died has children, their spouse/civil partner will get:
Up to £250,000 of the estate's assets and all their personal belongings (clothes, furniture, jewellery)⁵

Although the children or family of the victim may find out about the marriage after the death of the older person, they may not be able to fight it. Marriages can only be annulled if they are incestuous, the participants were under 16, or if they are bigamous, not if they are fraudulent.⁶

By 2040, those aged over 65 in England are predicted to number 14,527,100, almost 4% of the total population, 1,149,455 of these people are predicted to suffer from dementia (almost 8%)⁷ With a similar ageing population and increase in dementia diagnoses forecast across the other 3 UK nations, it is highly likely that cases of predatory marriage will increase, and thus action must be taken now to help stop these acts.

What are the hallmarks of predatory marriage?

It is not always easy to identify when a marriage is abusive, however the hallmarks of a predatory marriage can be summarised as follows,

- The marriage takes place suddenly after a brief relationship.
- Capacity to marry is unclear or they are otherwise vulnerable.
- The marriage takes place in another jurisdiction with less strident capacity or formal rules.
- The marriage takes place in secret.

Other aspects of the marriage may also indicate a potential predatory marriage including a dramatic age difference between the spouses, or if the older spouse is particularly wealthy or has a number of economic assets. A marriage soon after the loss of a lifelong partner may also be potentially predatory.⁸

What are the issues with current safeguards?

Current safeguards are not sufficient to protect vulnerable older people: While separate forty-five-minute interviews at the notification of marriage are a key safeguarding aspect to try to help prevent forced or predatory marriages, it is understood that these may not always happen if registrars are under time pressure.⁹

Registrars also have responsibility for judgment of mental capacity on the day, but these persons may not have adequate or effective training on dementia or mental capacity - there is also currently no requirement to check the medical records at the time of a marriage, no matter the age of the participants, and the 2005 Mental Capacity Act underlines that every individual must be proven to have mental capacity unless proven otherwise,¹⁰ a key principle but one which may mean victims lacking capacity may slip through the gaps in the marriage procedures.

There are a number of other gaps which exist in current safeguards,

- If the victim has set up a power of attorney, the attorney is not notified if they marry.
- Notifications of marriage are displayed on notice boards in registry offices and are not easily searchable or listed online.
- No evidence is kept at the point of marriage – no video or audio recordings – once a marriage certificate is obtained the following impact on wills is almost impossible to challenge.
- There are currently no procedures in place wherein if one registrar is concerned about the capacity of one of the spouses, the marriage has to be stopped.
- There is no requirement for informed consent at marriage.
- There is an absence of joined up safeguarding between different organisations and an absence of standardised safeguarding or mental capacity training.

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Consulted or recommended resources

1 Johnstone, A at Strathern Anderson LLP (2018): UK: Protecting the family inheritance from a “Predatory Marriage” <https://www.mondaq.com/uk/wills-intestacy-estate-planning/762320/protecting-the-family-inheritance-from-a-39predatory39-marriage>

2 City of London Police. (2011) Assessment: Financial Crime against Vulnerable Adults. Great Britain: Social Care Institute for Excellence; Adults’ Services SCIE Report No.: 49; 2011

3 Fraga Dominguez, S, Storey, J, and Glorney, E (2021): Informal Supporters of Elder Abuse Victims: Who Are They and What Is Their Experience Seeking Help? Journal of Family Violence.

4 Pennington, Manches, Cooper (2022) Predatory Marriage: What is it and What can you do? <https://www.penningtonslaw.com/news-publications/latest-news/2022/predatory-marriage-what-is-it-and-what-you-can-do#:~:text=At%20present%2C%20the%20law%20provides,it%20is%20bigamous%20or%20incestuous.>

5 Beyond Life (2022) The Intestacy Rules For Northern Ireland Explained/. <https://beyond.life/help-centre/admin-legal/the-intestacy-rules-for-northern-ireland-explained/#:~:text=When%20the%20person%20who%20has,be%20split%20equally%20between%20them.>

6 Gov.UK (2022) Annul a Marriage. <https://www.gov.uk/how-to-annul-marriage>

7 Institute of Public Care (2022) Projecting Older People Population Information.

8 Miler, D (2012) Elder Exploitation Through Predatory Marriage Canadian Journal of Family Law.

9 Predatory Marriage UK (2022) FAQ https://www.predatorymarriage.uk/?page_id=35

10 Social Care Institute for Excellence (2020) Mental Capacity Act 2005 at a glance <https://www.scie.org.uk/mca/introduction/mental-capacity-act-2005-at-a-glance#:~:text=Every%20adult%20has%20the%20right,particular%20medical%20condition%20or%20disability.>



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