

FIVE ST ANDREWS HILL FAMILY TEAM NEWSLETTER

Welcome to our first family team newsletter.

Here the team will be discussing cases we are working on and areas which are topical and interesting at the moment.

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Chambers of David Josse QC..
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For details on all our seminars and events please go to
<http://www.5sah.co.uk>

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The first person to be protected with a Joint Order against Forced Marriage and FGM

By Katherine Duncan



In June 2016 the first joint forced marriage Protection Order and Female Genital Mutilation Protection Order was granted.

The woman in question was due to be married in a mutually agreeable arranged marriage when the marriage was called off suddenly by the groom-

to-be's family as she had not undergone female genital mutilation (FGM). Her father then began to receive threats from family members for not having his daughter cut.

The pressure on her grew to undergo FGM as a number of arranged marriages fell through as she was not considered respectable amongst the community as she had not been circumcised.

After seeing her GP to try arrange an appointment to be cut, the woman was referred to West Midlands Police.

She informed them that she believed she was at imminent risk of her father arranging a forced marriage and that she could be taken abroad to undergo FGM.

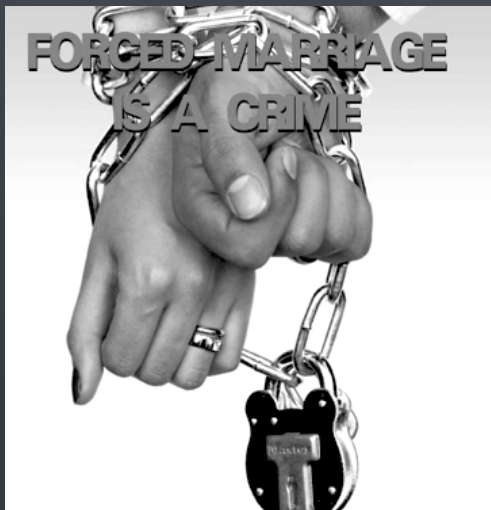
The police applied for a joint Forced Marriage Protection Order (FMPO) and a FGM Protection Order (FGMPO) to keep her safe – the first of its kind.

The barrister drafting the order can be creative in drafting terms to keep the person safe. In this case, the order included a term for the father to change his phone number and email address to prevent contact with those in his community who might encourage him to make his daughter undergo FGM or force her to marry.

The Orders can be made against a wide range of people – not simply the parents. An Order may give other family members the strength to stand behind an Order to refuse to assist a controlling father or mother.

As it is often the police who apply for the Order on behalf of the person to be protected, it alleviates some of the pressure on that individual as the police can tell the court the individual's circumstances without the already vulnerable individual having to give evidence against her family.

If you have a case where this may apply and you would like to discuss it do get in touch at katherineduncan@5sah.co.uk



LAW BRIEF UPDATE

Providing updates to the legal industry since 2005



Amelia Nice and Katherine Duncan produce the case summaries for the International Family Law Section for Law Brief Update. Law Brief Update is a free monthly newsletter written by over 20 different barristers which is circulated to 10,000 practitioners in the UK. The newsletter covers a range of practise areas. If you are interested in signing up for the newsletter, please click [here](#).

GEMMA LINDFIELD IN THE TIMES

writes about how the UK needs to ratify international convention that protects women from gender-based violence.

As the world shrinks and more relationships and families cross borders, prevention becomes ever more important.

To read the full article on the Times website click [here](#)



Contempt of Court Proceedings in Family Law

By Hilary Lennox

Has a party in family proceedings lied in their witness statement? If so there maybe a remedy.

An application can be made for permission to bring contempt of court proceedings against a party who has made false statements.

If a party made a false statement within a statement, signed that statement by a statement of truth and the false statement was made without an honest belief in its truth. Then CPR 32.14(1) provides:

"Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth."

Section 6 of Part 81 contains provisions in relation to committal for making a false statement of truth. Pursuant to CPR 81.18(3), such a committal application may only be made with the permission of



a Judge of the Queen's Bench Division, or the Attorney General.

Proceedings for contempt are not private law proceedings. They are public law proceedings. They may in appropriate circumstances be brought by private individuals. They can always be brought by the Attorney General, but private individuals may bring them.

These are civil proceedings so the overriding objective set out in CPR 1 is applicable. The overriding objective enjoins the court to deal with cases justly, ensuring so far as practicable that the parties are on an equal footing,

that expense is saved and that the case is dealt with in ways which are proportionate to the money involved, to the importance of the case, the complexity of the issues and the financial position of each party. Further whether a strong *prima facie* case has been established on the material before the court that the respondent made a false declaration.

At the permission stage it is not appropriate to stray into deciding the merits of the allegations made. However, an assessment must be made of the strength of those allegations on the material placed before the court.

The court will consider whether the case is one in which the public interest requires the committal proceedings to be brought and not solely for the furtherance of private interests.

If you have a case where this may apply and you would like to discuss it do get in touch at hilarylennox@5sah.co.uk

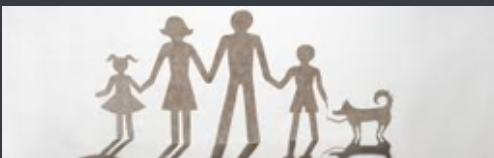
"Surrogacy, a Ticking Time Bomb"

By Amelia Nice

Last year, Mrs Justice Theis warned of a surrogacy "ticking time-bomb" with large numbers of parents to children born via a surrogate failing to obtain legal permission to take care of their new children.

Recent surrogacy cases have shown how the legislation does not adequately protect the child or reflect the reality of surrogacy arrangements, with many cases relating to the vexed question of the timeframe for applying for parental orders.

However, after the decision of



Z (A Child) Re [2016] EWHC 1191 (Fam) (20 May 2016) hope is on the horizon. The father of a child born via a surrogate was single and applied for a parental order under s.54(1) of the Human Fertilisation and Embryology Act 2008, but was refused by the court. Section 54 requires the application must be made by two people.

The father then applied for a declaration that the sections 54(1) and (2) were incompatible with his and the child's rights under ECHR Article 8 (right to respect for private and family life) taken in conjunction with Article 14 (prohibition of discrimination).

The Secretary of State for Health conceded that the provisions of s.54 were incompatible with those Articles and the President of the Family Division, made the order sought containing the declaration and further providing that



the father's application for a parental order in respect of the child was adjourned generally with liberty to restore. The Court however declined to comment on the need for reform,

noting that this was an area of social policy in relation to the controversial matter of surrogacy

Happily, and as a result of this case, Parliament indicated a few days later that there would be a review of the legislation whilst also maintaining its support for the CAF/CASS campaign to increase awareness of Parental Orders is ongoing and targeted at health workers, local authority registration staff and surrogacy agencies. Unfortunately, no timescale has been indicated, but all of the practitioners in this

field are hoping for speedy reform.

If you have a case where this may apply and you would like to discuss it do get in touch at amelianice@5sah.co.uk

Jacqueline Julyan Head of the Family Team

is currently delivering training seminars for the Police Force in and around the UK on forced marriage and domestic violence protection orders.



Honour Based Killing and Financial Remedy Proceedings

A practical case study

This seminar is presented by **Maria Scotland, Sarbjit Athwal, ex-Detective Chief Inspector Clive Driscoll and Sarah Wood.**

Relying upon non-financial conduct in financial proceedings can be notoriously difficult. This seminar looks at the case law on the topic and explores, in a practical way, the way in which it can be successfully done by looking at the detail of a recent case that Maria Scotland and Sarah Wood have been involved in.

The client was **Sarbjit Athwal, founder and CEO of the charity 'True Honour'. The charity was founded following her own personal experience of being the main witness in a murder trial in which her mother-in-law and brother-in-law were convicted of the murder of her sister-in-law. She is the author of the book 'Shamed' about her experience.**

The subsequent family proceedings forced her to face her mother-in-law once more as she was named as an intervener in the proceedings. Nothing about the case was straightforward but the final result reveals how the courts can be persuaded to use equitable principles and conduct in reaching a fair and just outcome.



Sarah Wood Call 1996
Both Counsel in this case.



Maria Scotland Call 1995
Both Counsel in this case.

Sarbjit Athwal was only 19 when she got married and moved into the house of her husband's strict family, which included her mother-in-law, her husband's brother and his wife. Her sister-in-law was murdered for bringing shame on the family by her mother-in-law and husband. Sarbjit Athwal feared a similar fate and continued to live in fear of both her husband and all of her extended family. She reported events to the police but nothing happened.

After some time DCI Clive Driscoll took over the investigation. Eventually Sarbjit Athwal's mother-in-law and the victim's husband were tried and convicted at the Old Bailey.

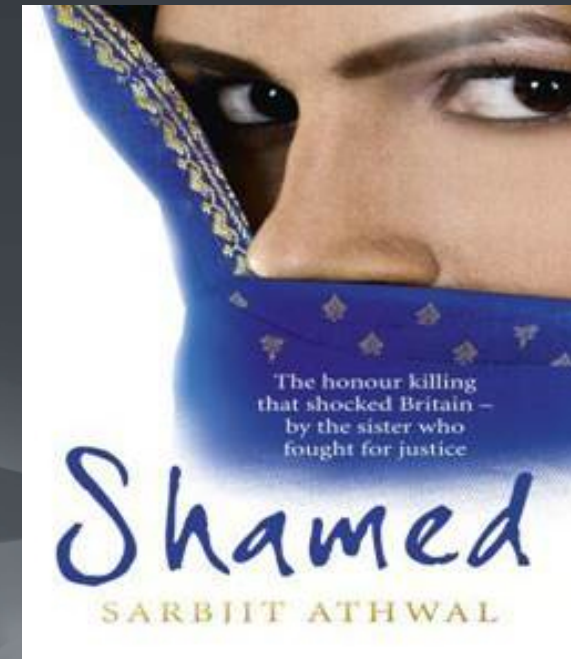
Maria Scotland and Sarah Wood became involved in the financial remedy proceedings that flowed from Sarbjit Athwal's divorce from her husband. The main issue for the Court to determine was the extent to which the Court could have regard to the background and conduct that Sarbjit Athwal had experienced.

Dates for this Seminars 2 CPD Points

This seminar first took place at 5 St Andrews Hill on 26 May 2016. It also took place at the offices of TV Edwards on 29 June 2016.

It is due to take place at the offices of another firm of leading family solicitors in September. If you are interested in hosting this seminar or attending any of our seminars and events, please email our Chambers Director (Wayneking@5sah.co.uk) with your details .

Look out for upcoming FGM seminar in October 2016. The date will be published on our website in the coming weeks. To see details of all of our events at 5 St Andrews Hill go to our website at www.5sah.co.uk



Ms Sarbjit Kaur Athwal (her book cover)

Detective Inspector Clive Driscoll investigated several high profile cases obtaining two convictions in the Stephen Lawrence murder.

He became the first police officer to obtain a conviction in an honour based violence murder where no body has ever been found. The Sarbjit Athwal murder has been described as a Landmark Case where a conviction was obtained against all odds.



Meet the Team



Jacqueline Julyan SC
Head of Family Team
Call: 1985



James Harris
Call: 1975



Roger Birch
Call: 1979



Maria Scotland
Call: 1995



Sarah Wood
Call: 1996



Gemma Lindfield
Call: 2002



In Udom
Call: 2002



Amelia Nice
Call: 2006



Hilary Lennox
Call: 2008
Editor



Jessica Franklin
Call: 2011



Mark Smith
Call: 2012



Natasha Shotunde
Call: 2013



Katherine Duncan
Call: 2014



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