

FORCED MARRIAGE – A CONSULTATION SUMMARY OF RESPONSES



Home Office

June 2012



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Introduction

The UK is one of the leading countries in the world in tackling forced marriage. It is an appalling practice that is recognised in the UK as a form of violence against women and men; domestic abuse; a serious abuse of human rights and, where a minor is involved, child abuse.

The Forced Marriage Unit (FMU), a joint Home Office and Foreign & Commonwealth Office Unit, is the Government's delivery arm for tackling cases of forced marriage. In addition to providing direct assistance to victims, the FMU also undertakes a full programme of outreach activity to practitioners and communities to ensure that people working with victims are fully informed of how to handle such cases. The FMU operates both inside the UK, where support is provided to any individual, and overseas, where consular assistance is provided to all British Nationals, including dual nationals. Victims are increasingly recognising the warning signs and have the confidence to come forward and seek help from the FMU.

That said, forced marriage still continues to remain covert and extremely difficult to assess. In 2011, the FMU provided advice or support in almost 1500 cases, of which 78% were female and 22% male. However, we know that this does not reflect the full scale of the abuse, and that there are many more cases not reported. Research carried out by the then Department for Children, Schools and Families estimated that the national prevalence of reported cases of forced marriage in England was between 5,000 and 8,000.¹

In October 2011, the Prime Minister announced that the Government would criminalise the breach of a Forced Marriage Protection Order (FMPO) and would consult on making forced marriage a criminal offence.

On 12 December 2011, the Government launched a consultation to seek views on how we might implement the criminalisation of a breach of a FMPO and whether forced marriage should be criminalised. Views were sought from key partners, and directly affected parties including victims of forced marriage, the police, local authorities, legal practitioners, third sector agencies, other government departments and all organisations with a direct interest in tackling forced marriage. Comments were also invited from members of the public.

The consultation closed on 30 March 2012 and this document provides a summary of the responses and outlines the Government's proposed next steps.

1 Department for Children, Schools and Families, Forced Marriage-Prevalence and Service Response, DCSF-RB128, July 2009

Overview of responses

We received 297 responses to the consultation, of which 231 were from the on-line questionnaire posted on the Home Office website and 66 were received via a dedicated email inbox. We also held three consultation events in Newcastle, Cardiff and London.

The profile of respondents to the online questionnaire or who sent responses to the dedicated email inbox was as follows:

Profile	Number
Members of the public	175
Statutory agencies (e.g. local authorities, police)	40
NGOs/other service providers	40
Legal experts	20
Representative bodies	15
Victims (as self-identified in the on-line questionnaire)	7

Separately, the charity Karma Nirvana conducted their own postcard campaign where they asked members of the public key questions on forced marriage. They received 3,000 responses which informed their response to the consultation.

HOME OFFICE CONSULTATION EVENTS

The purpose of the consultation events was to seek the views of frontline staff and victims on whether current civil legislation is working and if not, whether the creation of a criminal offence would help tackle forced marriage. The events also sought the views of participants on how breach of Forced Marriage Protection Orders should be modelled.

Initial analysis of responses

Of the total number of 297 responses:

- 54% of respondents were in favour of the creation of a new offence;
- 37% were against the creation of a new offence;
- 9% of respondents were undecided;
- 80% felt that current civil remedies and criminal sanctions are not being used effectively.

There were arguments both for and against whether a new offence should be created for the act of forcing someone to marry. Many of those in support felt that it would act as a deterrent and deliver a strong message that we would not tolerate this abhorrent practice and would prosecute perpetrators. It was also suggested that this approach would empower victims to come forward and report incidents of forced marriage because the issue of victims actually agreeing to marry under duress should not be under-estimated.

Those against criminalisation felt that it could drive the issue further underground, as victims would be less inclined to want to come forward if it would ultimately lead to members of their family being imprisoned. There were concerns regarding the issues of intent and the ‘burden of proof’ and that it could result in victims being taken overseas for the purpose of marriage at a much earlier age.

A number of general themes and issues also emerged from the consultation responses. These included:

- Recognition of an urgent need to tackle forced marriage more effectively to ensure that the needs of all victims and potential victims were considered, alongside the requirement to prosecute those responsible for perpetrating forced marriage.
- The need for more effective training for professionals on the implementation of the multi-agency statutory guidance and on how to utilise civil remedies more effectively.
- The need for clarification of the differences between forced and arranged marriage, to ensure that perpetrating the act under the misconception of culture and religion is no longer a justifiable action.
- The need for more funding, for more support services to provide refuge space and support for forced marriage victims.
- The need for awareness raising campaigns in the media and in schools in order to highlight forced marriage, as it was felt that it was not recognised in mainstream society.
- Additional concerns were raised about the impact of forced marriage, and the proposals to tackle it, on minority groups. Approaches to tackling forced marriage will have to apply to all communities in order not to stigmatise particular cultures and religions.

The consultation also sought views on how criminalising the breach of Forced Marriage Protection Orders (FMPOs) should be modelled. They focused on aspects of the breach of non-molestation orders under the Domestic Violence, Crime and Victims Act 2004, which made it a criminal offence to breach a non-molestation order, as well as seeking views on whether other models, for example in Scotland or any other jurisdiction, were more suitable.

Respondents were also asked for their views on how victims of forced marriage could be encouraged to disclose breaches and what additional mechanisms needed to be introduced to support victims, particularly in relation to the criminal justice process.

The common themes that emerged included:

- Broad support among key stakeholders such as the police, the voluntary sector and the legal profession(s) for new legislation to criminalise FMPO breach, which many considered would bolster the effectiveness of the Forced Marriage (Civil Protection) Act 2007.
- General consensus that the non-molestation order model should form the basis of new legislation to make breach of a FMPO an offence.
- General agreement that victims should have a choice of using the existing civil remedy in relation to breach, for example if the Crown Prosecution Service decided that there was not enough evidence to prosecute alleged perpetrators.
- Agreement that additional support mechanisms were needed to assist and protect victims who disclosed the breaches or were engaged in criminal proceedings.

Government response to the consultation

We would like to take this opportunity to thank all respondents who have contributed to the consultation. We will continue to engage with partners as we move forward on the issues raised throughout the document.

Having held a detailed consultation and listened carefully to all views, we have decided to make forcing someone to marry a criminal offence. In doing so, we are sending out a clear message that this practice is totally unacceptable and will not be tolerated.

It is clear that forced marriage is a highly sensitive and complex issue. The spectrum of views offered during this consultation process reveals the challenges in addressing forced marriage. The recurring theme throughout the analysis of responses is the plea for forced marriage to be tackled effectively, with the interest of the victim at the heart of our approach.

We do recognise the concerns raised by many that new criminal laws may deter reporting of forced marriage. We will therefore ensure that we work closely with partners to implement any legal change within the context of a broader strategy for encouraging a sensitive and appropriate response to all potential cases, which puts the victim centre stage.

We know that legislation alone is not enough and we remain focused on prevention and increasing support and protection for victims and those at risk of becoming victims. We will be developing a programme of work over the next three years which will include:

- **To help protect children** – we will help those working in education and safeguarding children know how to spot the earliest signs that a child may be at risk and know what action to take
- **To help young people at risk of being taken abroad and forced into marriage** – we will run a major summer awareness campaign in summer 2012 aimed at young people between the ages of 15 to 22 who are at risk, or close to someone at risk of being taken abroad and forced into marriage
- **To further protect those at risk** – we will criminalise the breach of a Forced Marriage Protection Order (FMPO)
- **To raise awareness across all communities** – we will roll out a nation-wide engagement programme focused on prevention and education, delivered through regional road shows and debates and supported by multi-lingual posters
- **To ensure victims receive the right support in a joined up way** – we will develop and expand current training and guidance for frontline professionals ensuring all the relevant agencies are included – the Crown Prosecution Service (CPS), the police, the judiciary, health agencies, social services, Independent Domestic Violence Advisers and Independent Sexual Violence Advisers – and that local authority nominates a Single Point of Contact to enable a more effective and responsive service for victims
- **To help those who have already become victims overseas** – we will fund a comprehensive package to provide emotional and practical support over the first six months for victims following their repatriation to the UK by the Forced Marriage Unit.

Should forced marriage be a criminal offence?

Although there is no specific criminal offence in England and Wales of forcing someone to marry, the types of behaviours prevalent when forcing someone into marriage can in themselves constitute a variety of existing offences, including some very serious ones.

Therefore, a key consideration in creating a criminal offence is whether there is any behaviour that would constitute such an offence that is not already covered by existing criminal offences. In addition to that is the consideration of whether there should also be an offence of luring someone into a forced marriage.

A summary of responses to key questions in the consultation follows.

Do you believe that the current civil remedies and criminal sanctions are being used as effectively as they could be in tackling forced marriage? If not, what more do you think can be done to prevent forced marriage including ensuring victims are not deterred from reporting?

The majority (80%) of respondents believed that current civil remedies and criminal sanctions are not being used as effectively as they could in tackling forced marriage, which does indicate that more needs to be done.

A widely held view was that all professionals with a responsibility for tackling forced marriage would need better training on how best to utilise and implement civil remedies more effectively. Professionals also needed to be culturally sensitive and ensure that effective support is provided at all stages of the proceedings.

It was also strongly felt that agencies needed to be aware that the pressure from families and indeed the wider community has a strong influence on the victim, especially children and young people. An important point to note is that perpetrators and other members of the family will always support one another against the victim in court.

A suggested approach was for an education programme to be developed for children and young people, outlining that forced marriage is wrong and also providing details of the various types of support that are available.

EXTRACTED COMMENTS FROM SOME RESPONDENTS

‘It is important we get this response ‘right first time’ if we are to make the best use of legislation. This needs to be outlined in the implementation plan for any legislation as it is imperative that adequate training is provided, operational systems are in place and clear referral pathways for specialist support are outlined. This will in turn improve response and enhance victims trust and confidence to report.’

Source: ACPO

‘Depending on the facts of the individual case, the CPS is currently able to prosecute FM related cases and the charge chosen will depend on the seriousness of the offending behaviour. If a new criminal offence was created for FM, depending on the facts and circumstances of the case, the CPS would still decide to charge other offences if that better reflected the gravity of the offending (e.g. rape, kidnapping etc).’

Source: Crown Prosecution Service (CPS)

'We believe that criminal sanctions are not being used effectively and do not appropriately or sufficiently accommodate the protracted nature of psychological and emotional coercion involved in forcing one to marry. This sort of abuse may be sustained over a prolonged period of time, rather than being a one-off violent attack to coerce into marriage.'

Source: Karma Nirvana

'Effective implementation of civil remedies is being hampered by weak enforcement of the laws, indifference and ignorance of the civil remedies available, especially within the police force and in schools.'

Source: Southall Black Sisters

Do you think a criminal offence should be created for the act of forcing someone to marry against their will? If so, how do you think the offence would be defined?

THOSE IN FAVOUR

The majority of responses were in favour of criminalisation, but did not generally provide further information on why this would be the best way forward to tackle forced marriage. However there were some more detailed responses from practitioners supporting criminalisation. Those in favour thought it would act as a deterrent and deliver a strong message that we would not tolerate this practice and would prosecute perpetrators where necessary. This would not only protect victims, but also younger siblings who may become future victims.

It was also felt that this approach would empower victims to come forward and report any incidents so that parents or families might think twice about instigating a forced marriage.

A considerable number of respondents felt strongly that a specific offence would clarify what steps can be taken by professionals and make it easier to take action against perpetrators, rather than using legislation that was not specifically designed to tackle forced marriage.

A number of respondents said that criminalisation would provide victims with a choice of a civil or criminal route without the fear that their parents would automatically be prosecuted.

Finally, some respondents felt it would enable victims to obtain recognition of the abuse inflicted upon them, and ensure that perpetrators could potentially be prosecuted for the act of forced marriage, along with any other offences that took place at the same time.

THOSE AGAINST

There were a significant number of responses from practitioners who were against criminalisation. There was a concern that the distinction between an arranged and forced marriage is still not as clear-cut as is generally perceived. It was felt that there was a grey area where no actual force was applied and in such cases it would be extremely difficult to define whether the threshold for forced marriages has been reached.

There was also the over-riding concern that criminal proceedings could deter victims, which would then lead to fewer civil or criminal sanctions, and ultimately result in forced marriage being driven further underground.

A specific concern was raised relating to victims of forced marriage with learning disabilities who are usually completely dependent on the family network, as it was felt that criminalisation could limit their choices further.

If the decision to criminalise was taken, it was argued that it could then result in victims being taken overseas for the purpose of marriage at a much earlier age. This is mainly due to the likelihood that much younger victims will either be unaware of what to do, or less likely to speak out and report when faced with the situation.

There was a strong belief that criminalisation could potentially disempower victims, as they might want a non-criminal resolution of their case and reconciliation with their family.

Respondents felt that where charges were not brought or defendants were acquitted, criminalisation could have a negative impact on victims who may feel let down by the justice system. The repercussions that could emerge from failed prosecutions could reduce the confidence of victims seeking to pursue a civil remedy.

It was felt that there could be considerable difficulties in meeting the burden of proof in many forced marriage cases, which could ultimately reduce the number of cases that could be dealt with in the criminal courts.

EXTRACTED COMMENTS FROM SOME RESPONDENTS

‘Criminalising forced marriage would provide a sound basis and structure for all professionals working to address this issue – while it will certainly act as an effective deterrent, additional work will still be required to address the wider social issues.’

Source: Staffordshire County Council

‘The issue is already underground but being able to recognise that forced marriage was in itself a crime may deter some families and support some victims to name what was happening to them’

Sourced: Mayor’s Office for Policing and Crime

‘If criminal legislation was introduced, there would be challenges in relation to evidence gathering, additional costs and resources. It would be anticipated that there would be greater pressure on the current limited availability of rehousing victims in a safe environment.’

Source: ACPO

‘Deep-rooted attitudes and indoctrination cannot be changed overnight or eradicated by the creation of a criminal offence. The CPS will need to satisfy the high criminal standard of proof, namely ‘beyond reasonable doubt’. Considering the evidential difficulties of crimes the likelihood of a successful prosecution is very doubtful. It will be almost impossible to define a crime of forced marriage, as it would have to be drawn widely. The wider it is the more it lends itself to loopholes and defences being found to get round the charge(s).’

Source: Henna Foundation

What issues should be considered to ensure that a new offence does not deter people from reporting the crime?

There was a general recognition of the challenges that the creation of new offence could bring. It would be imperative that the public are aware of the offence and the support that would be available to victims.

Those in favour of criminalisation suggested that victims initially need to feel that professionals are approachable and that they will be taken seriously if they report forced marriage. There was a strong feeling that this issue should form part of Personal, Social and Health Education (PSHE) school curriculum, in order to ensure all young people are fully aware of the choices that are available to them. Many responses highlighted that forced marriage is not a subject victims feel able to openly speak about unless they fully understand that they have a right to choose their marriage partner.

Some respondents (including victims themselves) said that victims would have come forward sooner had forced marriage been made a criminal offence.

Those responses against the creation of a new offence felt that the implementation of existing criminal laws in a sensitive yet robust manner was a more constructive and viable way forward. This includes further understanding and wider awareness of the issues victims are facing in these circumstances.

A majority of respondents raised suggestions for improving the overall response to forced marriage:

- adequate and ring-fenced funding for support services, including refuges;
- robust implementation of the guidance and guidelines on forced marriage;
- robust mechanisms for law enforcement and accountability from the police and other key statutory agencies; and
- more campaigns on awareness raising within schools.

Do you think there should be an offence of luring someone abroad; luring someone to this country or indeed within this country; or from one country to another for the specific purpose of forcing them to marry?

Those respondents who were in favour of the creation of a criminal offence were also keen that luring someone abroad should form part of the offence. Their view was that the law should cover an overseas dimension to protect victims who may be taken abroad for the purpose of forced marriage. The offence has to be extra-territorial in order to enable the prosecution of defendants for threatened and actual forced marriages that occur abroad.

The Austrian Government, for example, has amended their existing forced marriage offence to include this aspect. There was a suggestion from a large number of respondents that the Government should consider working with key countries where forced marriage is common, to implement protocols or treaties that will place a duty on other jurisdictions to return perpetrators to the UK. This would complement the repatriation services already being provided by the Forced Marriage Unit.

Those against a new offence felt that luring someone abroad would be extremely difficult to prove because victims are often taken abroad under the pretext of a family holiday, often unaware of the actual purpose for their travel. Additionally, families may also go abroad for what are genuine reasons, but then fall under pressure from other relatives abroad to arrange a marriage. In cases such as this, it would be difficult to demonstrate that this has involved luring someone abroad for the purpose of marriage since that might not have been the original intention.

How far do you think a person's circumstances and age influence their approach/attitude in seeking protection/ justice?

Two-thirds of respondents said that age in particular plays a major part in influencing a person's approach to the question of seeking justice and protection. However, age or circumstances were not considered to be the most critical issue. A majority of the respondents felt that it was more a case of whether or not the family believes in 'honour'. There was also the issue of misplaced loyalty to consider – both on the part of the victim and perpetrator.

Responses from organisations representing LGB&T victims stated that LGB&T victims are also likely to be extremely reluctant to come forward and report instances of forced marriage due to the fear of the fact that their sexual orientation will ultimately come to light.

Do you think that the creation of a new criminal offence would make the law clearer?

A majority of respondents felt that the creation of a new offence would make the law clearer as it would enable all to recognise this issue as one which is criminal. This could help to clarify the law for victims and perpetrators. Criminalisation would also make the distinction between forced and arranged marriage clearer.

Other respondents thought that while a new criminal offence may send a clear message, it would be meaningless if victims are then deterred from coming forward to report forced marriage.

Both sets of respondents were in agreement that there still should be better enforcement of the civil and criminal remedies that exist and a sustained campaign to create a wider culture that is intolerant to all forms of violence against women and girls and vulnerable persons.

EXTRACTED COMMENTS BY SOME RESPONDENTS

'The creation of a new criminal offence would make the law clearer and consequently act as a deterrent.....it would ensure there was no scope for misinterpretation by either victim or perpetrator. It would clarify the law for the victim so that they understood their rights and were empowered to challenge their parents and family.'

Sourced: Soroptimist International

'More than one approach should be considered and consideration should be given to targeting the use of criminal activities to force a marriage, thereby rendering prosecution simpler.'

Source: Centre for Child and Family Law Reform

Do you think the creation of a new criminal offence would make it easier for professionals to tackle the problem?

Almost all respondents felt that a specific offence would provide professionals with the confidence they need to take action in suspected cases, rather than the risk that they do nothing. It was argued that criminalisation would support professional confidence and help professionals treat forced marriage as abuse.

Others raised the view that further clarity about who would be considered to be the perpetrators under the new legislation would still need to be sought. There was a strong feeling that more importance should be placed on the issue of effective monitoring and enforcement mechanisms, so that guidelines, policies and procedures could be properly implemented across a range of statutory agencies charged with the protection of vulnerable adults and children.

Therefore it would be more important to ensure statutory agencies embed forced marriage within their existing children and adult safeguarding structures, strategies, policies and procedures. The Forced Marriage (Civil Protection) Act 2007, statutory guidelines, domestic violence and child protection policies and procedures should make it clear the forced marriage is an issue that must be tackled and that protection is the main objective.

EXTRACTED COMMENTS BY SOME RESPONDENTS

‘The recent review of the forced marriage guidance has shown that many bodies have not engaged with the issue of forced marriage, with schools proving especially problematic. What is needed is a strong push from national government to ensure that schools and other bodies are meeting their responsibilities, with sanctions for those which are not doing so.’

Source: IKWRO

‘Criminalisation will only add to the misconception held by some professionals that forced marriage is ‘specialist’ area that can only be dealt with by the police and specialist agencies.’

Source: NSPCC

Do you think that criminalising forcing someone to marry would change public opinion to forced marriage, particularly in those communities most affected?

The majority of respondents believed that it would change public opinion as the law can be used to send a powerful symbolic message about our society.

Others felt that attitudes, which are often rooted in both an individual's and a community's sense of cultural identity are difficult to challenge, particularly as this often invites criticism that those outside of the culture simply don't understand or respect their culture.

EXTRACTED COMMENTS BY SOME RESPONDENTS

'Attitudes take a long time to change but it is our belief that criminalisation of forced marriage sends a clear signal, not only to the perpetrators, but also to victims that this is unacceptable and highly damaging.'
Source: Mix Together

'Changing opinions amongst some of those within the communities most affected is a complex and challenging issue, but we believe that it is important to make a clear statement about what is unacceptable in this legal jurisdiction.'
Source: Resolution

Breach of Forced Marriage Protection Orders

The responses to the consultation questions on the breach of Forced Marriage Protection Orders (FMPOs) are summarised below.

Do you think that the model for breaching Forced Marriage Protection Orders should follow that for breach of non-molestation orders?

The vast majority of respondents (71%) felt that the non-molestation model should be used for criminalising the breach of a FMPO.

In their joint response, Mr Justice Hedley of the Family Division and Mr Justice Maddison of the Queen's Bench Division noted:

'We are clear that if breaches are to be criminalised, then the DV model should be followed. It is now well settled and the current evidence is that it has had no adverse impact of the seeking of non-molestation orders in the county court.'

Fifteen per cent of respondents felt that the model for criminalising FMPO breaches should not follow the non-molestation order model and the remainder were either unsure of which model should be or did not respond to the question.

One respondent observed that general domestic violence cases were a very different concept to forced marriage cases and that victims of this specific practice had to be dealt with differently in law to other victims of domestic violence.

It is highly likely that most respondents opted for the non-molestation order model because it was based on existing domestic violence provisions under the Family Law Act 1996. A significant number of these respondents, particularly those from the statutory and voluntary sectors, who worked with victims, would have been familiar with non-molestation order applications.

There was general unfamiliarity with the recently implemented Scottish forced marriage legislation to which the consultation document referred. This probably arose from the fact that most of the respondents were based in England, and from the newness of the Scottish legislation.

Should it be an offence to breach any/all provisions contained in the order with no specific power of arrest required?

Section 1 of the Domestic Violence Act 2004 amended the Family Law Act to make breach of a non-molestation order a criminal offence, and as part of this reform removed the provision for a court to attach a power of arrest (PoA) to a non-molestation order.

The latest statistics indicate that there were 20,444 non-molestation orders issued in 2010 and that there were 2,257 breach proceedings for the same year.²

2 Source: Ministry of Justice Analytical Services

Unsurprisingly, a similar proportion of respondents (71%) to those who chose the non-molestation model agreed that it should be an offence to breach any/all of the provisions contained in the order with no specific PoA as the breach of a non-molestation order followed along the same lines.

Many respondents highlighted that FMPOs had to act as deterrents and that the requirement to arrest those who breached the order would give an order ‘teeth.’

The Law Society highlighted that making all provisions of an order a criminal offence would serve to remove any confusion about which parts of the order had a PoA attached:

‘This would bring certainty to the provisions in the Order and remove any element of doubt about which provisions have a Power of Arrest attached. Ensuring that the breach of each provision is an offence can only help to serve as a deterrent.’

Twelve per cent of respondents felt that a PoA should be required for breaching some parts of the order, indicating that some viewed certain terms of an order as less serious than others. However some of their comments suggested that they may have misunderstood the question and were in fact responding that ‘no’ power of arrest should be required to arrest a perpetrator.

Only a small proportion of respondents (8%) were unsure of whether it should be an offence to breach all provisions contained in the order with no specific POA. There were a similar proportion of non-responses.

If the Crown Prosecution Service decides that there is not enough evidence to provide a realistic prospect of a criminal conviction, or that a prosecution is not in the public interest, should victims still have the choice to return the case for committal in the civil court?

The vast majority of respondents (85%) highlighted that it was important for victims to have a choice of whether to return the case for committal in a civil court if the Crown Prosecution Service (CPS) decided that there was not enough evidence to provide a realistic prospect of a criminal conviction or that a prosecution was not in the public interest.

However, some respondents highlighted that the decision of whether to deal with the breach under the civil or criminal jurisdiction should be ‘victim-led’ and not imposed on the victims of forced marriage:

The Diversity Sub Committee of the Family Justice Council echoed the importance of the victim’s wishes being included in the decision-making process but also noted the potential consequences of any failure of the CPS to act swiftly:

‘...Any delay will impact negatively upon the victim’s willingness or ability to enforce by way of committal proceedings in the civil/family courts and may reduce any sentence ultimately imposed. Victims should not be punished twice over by being charged with a criminal offence themselves such as wasting police time if they provide inconsistent accounts or ‘fail to cooperate’.’

Only a small minority of respondents (3%) disagreed that victims should have a choice of using either the civil or criminal route, one respondent noted that a decision had to be made at the outset about which route the breach should follow in the interest of the defendant facing the charge.

A small number of respondents were unsure of whether victims should have a choice.

In England and Wales breach of a non-molestation order or a restraining order currently attracts a maximum sentence of five years. What penalty should apply for the maximum sentence for breach of an FMPO?

Views on a maximum sentence for criminal breach were highly divergent, even though most respondents had previously responded that the criminal breach of an FMPO should be modelled on non-molestation orders, which attracts a maximum prison sentence of 5 years.

While 71 per cent of respondents chose the non-molestation model in their response to question one, only 31 per cent of respondents felt that the maximum sentence should be five years as in the non-molestation model. While the responses indicated a general acceptance of non-molestation order breach provisions, there were differing views on what the maximum sentence should be for the offence of breach of an FMPO.

Seventeen per cent of respondents felt that that the maximum sentence should be five years or more, with the majority of these respondents suggesting that a prison sentence of 10 years was suitable for any new offence, while one respondent felt that the maximum sentence should be life imprisonment. However, this respondent offered no explanation for their answer.

Nineteen per cent of respondents felt that five years was a suitable sentence, while only one per cent of respondents opted for the maximum sentence of two years as in the case of the Scottish model.

Seventeen per cent of the respondents either suggested custodial sentences of less than five years should apply or that the maximum prison sentence was not a sufficient penalty for perpetrators. These respondents felt that deportation, the withdrawal of UK citizenship and the application of financial penalties were also options that could be pursued in addition to custodial sentences.

The shortest maximum custodial sentence suggested was 6-12 months, while one respondent said that there should be a fine or non-custodial penalty.

Seven respondents were unsure of the question and there were 31 non-responses.

Do you think that there is another model, e.g. Scotland or any other jurisdiction that would be more suited?

Almost half of all respondents felt that there was not a more suitable model than the non-molestation model.

Nine per cent of respondents felt that there was a more suitable model than the non-molestation model, and a large proportion of these opted for the Scottish model while other respondents felt that an alternative model incorporating some aspects of the Scottish legislation was more suitable.

Some respondents, such as Staffordshire County Council, offered reasons for their choice such as the Scottish legislation appearing to be ‘fair and just’ or, in the case of another respondent that the Scottish model sent out a ‘clear message’ to perpetrators that forced marriage would not be tolerated.

Two responses were unclear about the specific reasons for suggesting there was a more suitable model, while one response suggested that Danish legislation was more suitable and three respondents stated that Germany’s forced marriage model should also be considered.

Some respondents noted that they were not aware of the Scottish model, noting that Scottish forced marriage legislation, implemented on 28 November 2011, was still in its infancy and needed time to be embedded and fully evaluated.

There were 32 non-responses, while the remainder were either unsure about the question or did not know enough about other breach models. From their answers to previous questions, a few respondents appeared not to respond to this question as they did not feel that breaches should be criminalised.

Do you think that other named respondents who know that an order had been breached but did nothing should also be liable for prosecution for breach of an order? If so, what level of involvement should attract such prosecution, and what scale of penalties should apply?

Only 10 per cent of respondents answered ‘No’ to this question. Of all the questions, this was the most contentious based on the responses.

Many of the responses highlighted that some respondents were also victims of the forced marriage and as such were powerless to stop abuse by members of their families or by the wider community and silenced by the threat of violence. The Jan Trust asserted:

‘Often named respondents might be unwilling to agree to a forced marriage in the first place but might face pressure from other family or community members and are therefore victims themselves.’

Other respondents, such as the Odysseus Trust, noted the difficulties of providing evidence in such cases:

‘There are practical difficulties with this option. The level of knowledge would have to be defined so as to penalise only those with guilty knowledge in circumstances in which it would be just to impose criminal liability. Furthermore, it would be difficult to provide knowledge to the requisite standard of proof in a prosecution – beyond reasonable doubt’.

Sixty per cent of respondents felt that named respondents who knew that an order had been breached but did nothing should face sanctions for the breach of an order. However, many of those who agreed also stressed that such respondents had to be fully apprised of the breach, but noted that factors such as the level of their involvement in concealing the breach, age, whether they were physically able to stop the breach and their relationship to the victim also had to be considered.

The scale of penalties ranged from fines and non-custodial sentences to custodial sentences (equal, in many responses, to the main perpetrator/s), to penalties in line with what some respondents viewed as comparable offences such as aiding and abetting, to deportation.

What mechanisms, if any, do you feel would assist victims and witnesses, particularly the young, in disclosing the breach of an order?

Responses to this question were wide-ranging. However, most responses centred on the importance of witness protection in courts, ensuring the anonymity of victims who disclosed a breach and the ability of victims to access confidential hotlines and web and mobile phone-based support services that allowed victims to discreetly access help.

The importance of ensuring that those working in the statutory agencies, such as the police, social workers and teachers, and in the voluntary sector were fully trained to deal with disclosure of a breach was also highlighted in the responses.

Some of the respondents also noted the role of schools in protecting and supporting young victims who disclosed a breach, but viewed cultural sensitivity as being a barrier to victims gaining the help to stop a forced marriage.

In addition to existing special measures in court (e.g. video-recorded statements, live links, screens) do you feel that any other mechanisms need to be in place to help victims and witnesses of forced marriage, particularly the young, through the criminal justice process once any criminal prosecution proceedings take place?

A wide range of views were expressed on the issue of what kind of additional mechanisms needed to be in place to help victims and witnesses of forced marriage, particularly the young, through the criminal justice process once criminal prosecution proceedings had taken place.

Many of the responses centred on the importance of ensuring the ongoing protection of victims during criminal proceedings, such as police officers offering protection to victims at the various stages of the court process and voice-overs for witnesses to protect their identities.

Other responses noted the importance of ensuring that magistrates and judges were fully aware of the issues faced by victims and the wider issue of honour-based violence.

The importance of providing appropriate facilities for victims in court and giving them clear information about the proceedings was also highlighted, as well as the provision of practical help to assist victims in rebuilding their lives such as benefits, counselling and re-housing away from perpetrators.

Several respondents suggested that it should be routine for a personal support worker to be assigned to victims during court hearings, so that they could be given moral support throughout the court process.

International responses

Through a range of civil and/or criminal measures, a number of EU member states have looked to address the occurrence and practice of forced marriage.

Some of these countries now have a range of criminal offences that may apply in the context of a forced marriage, which may include offences of rape, assault, kidnapping, abduction, false imprisonment, duress, and crimes against sexual freedom. A smaller number of these countries also have more specific legislation to cover the practice of forced marriage or the conduct causing a person into a forced marriage.

The countries that have criminalised forced marriage are in **bold**.

COUNTRY	LEGISLATION
Austria	Forcing someone into marriage is a distinct criminal offence in Austria. Austrians and people living in Austria are facing legal consequences for such actions only if this kind of marriage occurs within the country's borders. From January 2012 the Federal Government has amended the anti-forced marriage law to allow prosecutors to press charges against perpetrators over forced marriages abroad.
Belgium	Forcing someone to marry is a criminal offence.
Bulgaria	The criminal code contains a number of articles that criminalise activities that could be related to trafficking, such as kidnapping, false imprisonment, rape, inducement to prostitution, abduction of a woman for the purposes of sexual exploitation or for the purposes of forced marriage and illegal transport of a person across the border.
Cyprus	Forcing someone to marry is a distinct criminal offence in Cyprus.
Denmark	The Danish Criminal Code includes an offence of unlawful coercion, prohibiting the use of threats by a person to force another person to do something against their will. This offence would apply to marriage if threats were used to force a person into marriage against their will. The penalty for this offence ranges from a fine to a period of imprisonment not exceeding two years.
Estonia	Forced Marriage is not a criminal offence – civil courts will annul a marriage if the consent was obtained through fraud or duress.
Finland	Not expressly prohibited by Finnish law, although the law assumes that actions taken against the will of a person are prohibited.
France	No specific offence of forced marriage in the French Criminal Code, although French civil law has been amended numerous times in order to prevent forced marriages and to protect the affected individuals.
Germany	Forcing someone to marry is a distinct criminal offence and can be punished by up to five years in prison. The law also gives non-German citizens who are forced by their husbands/families to leave the country after their marriage a legal right to return to Germany.
Greece	Forced Marriage is not a specific offence in the Greek Penal Code; however the issue may be subsumed under other criminal offences such as coercion through violence or the threat of force.
Hungary	Hungary lacks specific legislation on forced marriage; such situations may be subsumed under other criminal offences such as coercion through violence or the threat of force.
Ireland	Forced Marriage is not a specific criminal offence. The law of nullity allows a marriage to be set aside where it was contracted in the face of fear, duress, intimidation or undue influence.

COUNTRY	LEGISLATION
Italy	No specific offence of forced marriage but various provisions on violence and other offences against the person in a marital or family context offer possible grounds for prosecutions.
Latvia	Forced Marriage is not a specific criminal offence.
Lithuania	Forced Marriage is not a specific criminal offence.
Luxembourg	Forced Marriage is not a specific criminal offence in the Grand Duchy of Luxembourg.
Malta	Forced Marriage is illegal in Malta – marriage of convenience is also an offence punishable by imprisonment.
Netherlands	The Criminal Code contains no definition of forced marriage – the code provides scope for prosecution in cases of forced marriage on the basis of other offences. However, the Dutch cabinet has approved a bill on forced marriage. The bill has been submitted to the State Council to be decided on constitutionally before sending it back to parliament for ratification.
Poland	The Criminal Code contains no specific offence of forced marriage.
Portugal	There is no specific offence of forced marriage – marriages concluded without the free will of both parties are deemed null and void.
Romania	The Criminal Code contains no definition of forced marriage – the code provides scope for prosecution in cases of forced marriage on the basis of other offences.
Slovakia	The Criminal Code contains no definition of forced marriage – the code contains specific provisions protecting children against various forms of assault and violence.
Spain	The Criminal Code contains no definition of forced marriage – the code contains specific provisions protecting women and children against various forms of assault and violence.
Sweden	There is currently no special legislation on forced marriage. It is criminalised under the penal code as unlawful coercion. However, forcing someone into marriage against their will could soon carry a punishment of up to two years imprisonment, according to an inquiry tasked with formulating a law criminalising the practice under Swedish law.



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ISBN: 978-1-84987-906-4

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