



THE GOVERNMENT RESPONSE TO THE EIGHTH REPORT FROM THE
HOME AFFAIRS COMMITTEE
SESSION 2010-12 HC 880

Forced marriage

**Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty**

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Introduction

1. Following recommendations made by a predecessor Committee in 2008, The Home Affairs Select Committee (HASC) held an inquiry into forced marriage to investigate how much progress had been made in implementing those recommendations over the past three years.

2. The Government welcomes the report of the Committee's inquiry as a valuable contribution to the debate on forced marriage. The Home Office Parliamentary Under-Secretary of State for Equalities and Criminal Information, Lynne Featherstone MP, appeared before the Committee to give oral evidence on 22 March 2011.

3. The Report of the HASC's inquiry was published on 17 May 2011. The Government has considered the Committee's recommendations carefully, and this paper sets out the Government's response. For ease of reference the paper responds to each of the Committee's recommendations (in bold type) in turn.

Comment 1: The increase in the number of cases handled by the Forced Marriage Unit and the number of calls made to the Honour Network Helpline since our predecessor Committee's inquiry in 2007 – 08 demonstrates that forced marriage remains a serious concern, affecting thousands of young people in the UK. The fact that more young women and, increasingly, young men are coming forward to seek help is encouraging but underlines the requirement for sufficient support mechanisms to be in place to meet their needs. (Paragraph 5)

Government Response

We are pleased that the Committee has acknowledged the role of the Forced Marriage Unit (FMU), which has worked closely with a number of other Non-Governmental Organisations (NGOs), to tackle the unacceptable practice of forced marriage. However, it is clear that for all agencies to provide a more efficient service for victims and potential victims of forced marriage, much more needs to be done to ensure our approach is consistent and joined-up.

In order to facilitate the principle of multi-agency working, we are currently looking at developing a more efficient and streamlined service for victims and potential victims of forced marriage through improved partnership working. This will not only provide an increased understanding of the problem, but also enable the spread of best practice amongst all specialist services.

The Ministry of Justice (MoJ) and the FMU have held seminars this year to highlight ways that practitioners could improve the way they engage with individuals in 'hard to reach' communities. Attendees were challenged on their current approaches and on how best practice was shared to encourage victims of forced marriage to seek further support, where this was unavailable through the more conventional channels.

The FMU and MoJ are also working closely with Karma Nirvana on a series of road shows, which are specifically aimed at raising wider awareness of the provisions of the Forced Marriage (Civil Protection) Act 2007.

The Home Office has been working with Southall Black Sisters to develop a leaflet to assist Black and Minority Ethnic victims to find support. The leaflet will be distributed across targeted embassies and consulates worldwide to victims entering the UK.

The FMU also undertakes an extensive outreach and training programme of around 100 events a year targeting both professionals and affected communities. This multi-agency approach to awareness raising, service provision and where possible, the introduction of information sharing protocols to enable the safeguarding of those at risk, will go a long way in tackling forced marriage in the UK.

Comment 2: We are pleased that victims and professionals are utilising the provisions of the Forced Marriage (Civil Protection) Act 2007, with 293¹ Forced Marriage Protection Orders made during the two years and four months

¹ This was the figure provided to the Committee at the time of the hearing.

following its enactment. However, the evidence presented to us suggested inadequacies in the monitoring of compliance with an order after it is made and a lack of effective action in cases of breach, with only one person receiving a jail sentence for breach of an order thus far. We echo our predecessors in recommending that the Government undertake and publish a further review of the operation of the Forced Marriage (Civil Protection) Act by the end of this calendar year, and then on an annual basis, in particular to investigate how orders are monitored, the real level of breaches and the judicial response to recorded breaches. It is not at all clear that the Act is wholly effective as a tool in protecting individuals from forced marriage and from repercussions from family members. While the measures in the Act should continue to be used, we believe that it would send out a very clear and positive message to communities within the UK and internationally if it becomes a criminal act to force—or to participate in forcing—an individual to enter into marriage against their will. The lack of a criminal sanction also sends a message, and currently that is a weaker message than we believe is needed. We urge the Government to take an early opportunity to legislate on this matter. (Paragraph 12)

Government Response

We disagree that the current legislation is ineffective in protecting individuals from forced marriage. Up to the end of 2010, 257 orders had been made since the implementation of the Act in November 2008. Although the current civil legislation does not directly punish those initiating the forced marriage, unless the order is breached, it does protect victims, which is the main objective. A number of orders have been made preventing marriage taking place and to assist in repatriating victims. 56 out of 116 applications were made by a third party including the police and local authorities.

While the Committee's Report states that criminalisation would send out a 'very clear and positive message', it does not define how this would be achieved above and beyond what is already achieved by the general criminal offences (assault, kidnap, people trafficking etc) that might apply in circumstances of forced marriage. However, if the Committee can provide evidence that a criminal offence and sanction would be more effective in encouraging the reporting of cases, or that it would deter perpetrators, we would be happy to consider it.

The 2005 Home Office consultation on criminalisation highlighted the difficulty of defining a criminal offence of forced marriage that would encapsulate all the particular behaviours involved. The allegation would also have to be proved to the criminal standard of proof - 'beyond reasonable doubt' potentially reducing the number of cases that could be dealt with in the criminal courts.

We remain concerned that there could be a negative impact on victims who might feel let down by the justice system, if charges could not be brought or the defendant were acquitted. While victims would still have the option to take the civil protection order route, repercussions from the failed criminal case in relation to family and community may mean they do not have the confidence to continue to pursue a civil remedy.

Following publication of the Committee's report, an independent consultation was reopened in June 2011 by Roehampton University Social Research Centre into the issue of whether a specific criminal offence of forced marriage should be created in England and Wales. Over half of the respondents felt, on balance, that the Government should not create a specific criminal offence of forcing someone into marriage, while 64% felt that the existing legislation was sufficient to tackle the issue. The results of this consultation will be published shortly.

Forced marriages are a very serious matter and any decision to change our current policy would need to be based on evidence of any lack of effectiveness of existing civil measures, any evidence emerging from the implementation of criminal sanctions in other jurisdictions and taking account of the views of our stakeholders. We will of course carefully consider any evidence that the Home Affairs Select Committee may provide in this regard.

We also accept that it would be timely to review some particular aspects of the legislation again and we have already been looking into the issue of breaches. The Committee commented on the fact that there have only been 5 breaches recorded suggesting that this means the legislation is ineffective. The courts would only be aware of a breach if the applicant brought the matter back to the court for committal.

We will also be following with interest the progress of the Scottish legislation, to be implemented later this year, which has criminalised breach of their equivalent of a forced marriage protection order. The Government will remain open to considering criminalising breach of a Forced Marriage Protection Order subject to the outcome of the evaluation of the Scottish legislation.

In conclusion, we continue to believe that the current legislation protects victims and potential victims of forced marriage, but will give due consideration to any evidence put to the Government that a criminal offence or a criminal sanction for breach of a civil order might encourage increased reporting and deter perpetrators.

Comment 3: We are also concerned at the level of awareness of the Act's provisions amongst frontline professionals. We look forward to receiving a copy of the review currently being undertaken by the Forced Marriage Unit of the execution of the statutory guidance on forced marriage and recommend that this include consideration of measures to extend its implementation across all agencies in all parts of the country. We further recommend publication of the Forced Marriage Designated Courts Resource Manual so that it is available to all professionals practising in this area. (Paragraph 13)

Government Response

The multi-agency statutory guidance on forced marriage applies to all persons and bodies in England and Wales who exercise public functions in relation to safeguarding children and adults and to third parties who exercise public functions on behalf of those persons or bodies.

Our review of the implementation of the statutory guidance will evaluate how all agencies have applied the strategic principles for dealing with forced marriage locally - as set out within the guidance - with a view to identifying patterns, good practice and possible areas for improvement. Scotland and Northern Ireland are currently developing their own statutory guidance and we will share the findings of our work with them to inform their work.

Frontline staff who handle cases of forced marriage are also strongly advised to consult the multi-agency practice guidelines that were issued by the FMU. Part of the follow-up to the review findings will also look at how the multi-agency practice guidelines are being used, to consider their revision as part of them being a more effective tool.

In relation to the Forced Marriage Designated Courts Resource Manual, we would like to take this opportunity to acknowledge the staff at Newcastle County Court and Cris McCurley, who were responsible for the initial draft. The Manual was published on the intranet site of Her Majesty's Courts and Tribunals Service and is currently being reviewed to assess its suitability for wider publication.

Comment 4: We have received mixed evidence about the impact of the change in the Immigration Rules in 2008 to require sponsors of marriage visas and their incoming spouses to be over the age of 21. We recognise that the change may be seen as discriminatory and has the potential for young people to be held in abusive situations for longer; however, it has undoubtedly helped a number of young people to resist forced marriage. (Paragraph 18)

Government Response

The current minimum age requirement of 21 for marriage visa applicants and sponsors is intended to protect young people from being forced into marriage. It provides an opportunity for individuals to develop maturity and life skills, and to complete their education and training, which may enable them to resist the pressure of being forced into marriage and/or into sponsoring a visa.

We welcome the comments from the Committee that the change has undoubtedly helped a number of young people to resist forced marriage. In June 2011 the Supreme Court heard the Secretary of State's appeal from the Court of Appeal judgment in the case of *Quila & Ors v Secretary of State for the Home Department & Ors* [2010] EWCA Civ 1482 (21 December 2010), which concerns this minimum age requirement. We await the judgment of the Court.

We have seen no evidence that raising the marriage visa age has itself led young people to be held in abusive situations for longer. In fact the FMU's evidence to the Supreme Court in the *Quila* case was that in their experience the majority of reluctant sponsors return to the UK soon after the marriage, although there are no statistics or data held in relation to this. This is generally so that the sponsor can establish themselves in employment in the UK, so that they are in a position financially to support the visa application.

Comment 5: We are extremely worried about the fact that many schools continue to refuse to engage in preventative activity with children at risk of forced marriage and have written to the Secretary of State for Education to express this view. We are disappointed by his response. On the basis of the evidence we have received, we do not accept his assurance that “schools will already be aware of the guidance available on forced marriage” or that, if they are, they are acting on it. Teachers who are not trained to respond properly to cases of forced marriage can inadvertently put pupils in greater danger by, for example, contacting their families. In the light of clear evidence that many schools are not fulfilling their statutory responsibilities with regard to forced marriage, the Department for Education must provide more active support to teachers to enable them to carry out a role which may risk upsetting cultural sensibilities but is nonetheless vital for child protection. We therefore recommend the schools are reminded annually of their responsibilities in this matter by the Secretary of State. (Paragraph 27)

Government Response

The Department for Education recognises that teachers play an important part in ensuring preventative measures are in place to protect children at risk of forced marriage, and need to be aware of their statutory responsibilities.

However, the Secretary of State for Education does not believe that that it is the Department’s role to be directive or prescriptive to schools on such issues. The Department’s role is to signpost schools to available resources and support in order to tackle forced marriage issues effectively.

The Department for Education intends to continue to work closely with other Government departments and a number of identified NGOs, to consider other measures through which teachers can be better equipped to address the threat of forced marriage.

It is therefore the Government’s view that these arrangements are sufficient and that the provision of an annual reminder to schools will not provide any additional value in terms of reminding schools of their responsibilities.

Comment 6: As noted above, the Forced Marriage Unit is currently reviewing implementation of the statutory guidelines on forced marriage, and the Department for Education must act on the findings in relation to schools. In addition, we recommend that Ofsted inspectors pay particular attention to policies in place to deal with forced marriage in their assessments of the safeguarding arrangements of schools where pupils are likely to be at risk of forced marriage. (Paragraph 28)

Government Response

The Government is committed to refocusing school inspection around the core areas of pupil achievement, teaching, leadership and behaviour safety.

The issue of forced marriage may be relevant to inspectors' evaluation of schools' arrangements for keeping pupils safe. If concerns are brought to the attention of inspectors they will be expected to satisfy themselves that the school is doing everything it can to support pupils.

There are no plans to ask Ofsted to consider compliance with statutory guidance on forced marriage as part of every school inspection, or for forced marriage to be covered specifically as a discrete aspect of an inspection.

Comment 7: We welcome the Secretary of State for Education's intention to widen the range of situations where schools must report pupil absence to the local authority, in particular where a child has failed to return to school following an extended family holiday, and to respond to concerns raised by Ofsted about the reasons for missing education and the lack of cooperation between councils and schools. We ask him to report back to us in due course on the action eventually taken to address these matters. (Paragraph 29)

Government Response

The Government is committed to ensuring that all instances of children missing from education are adequately investigated. Following an informal consultation we are reconsidering the implications of widening the range of situations where schools must report to the local authority that a child is missing from education and have decided not to go ahead with the change to regulations in September 2011.

We are also considering a number of other ways to ensure children are not missing education and will look again to make the change alongside any agreed proposals. The Secretary of State for Education will inform the HAC of progress in due course.

Comment 8: The police have been leading the way in pursuing Forced Marriage Protection Orders for victims and potential victims of forced marriage. However, the response to victims varies greatly on a force-by-force basis. We were greatly disturbed by evidence from a victim of forced marriage that she was required to report her situation to a succession of police officers, none of whom treated it sufficiently seriously. We are pleased to note that the Government recognises the importance of training for frontline practitioners in its Call to End Violence Against Women and Girls Action Plan and we request information about the outcome of the review of the forced marriage e-learning tool. All appropriate police officers should receive training in recognising and responding to forced marriage and we recommend that the Government consider how best to ensure that this kind of learning is cascaded down to officers, as part of its current review of police training delivery. (Paragraph 33)

Government Response

The FMU e-learning tool supports frontline practitioners to develop their awareness of forced marriage and harness their skills in safeguarding those at risk. The review of this tool will enable us to evaluate its use across practitioner groups, determine where improvements are required and then look at alternative methods to allow other organisations to host the site on local networks.

The Association of Chief Police Officers has been working with the National Police Improvement Agency to develop training packages on forced marriage for front line practitioners, as well as more specialist packages for investigators. Both of these training packages are due to be rolled out later this year.

Comment 9: We are disappointed by the lack of progress made by the UK Border Agency to resolve the issue of reluctant sponsors being unable to deny the foreign national whom they have been forced to marry a visa because they are afraid that their intervention will become known to their family, who might take action against them. We therefore reiterate our predecessors' call for a power of refusal without the need for an evidential statement to be attached to visa applications in cases of reluctant sponsors (Paragraph 38)

Government Response

The Government has considered this recommendation very carefully, but we have been unable to identify how it might be implemented in such a way as to provide additional protection to the reluctant sponsor and to avoid putting them at further risk.

The UK Border Agency is obliged to act in accordance with the immigration rules throughout the visa application process. Visa refusals must be clear and evidence based and, in line with general principles of fairness and transparency, a visa applicant is entitled to know the reasons for the refusal of a visa. It would not be appropriate to refuse a visa without reasons, and even if it were possible to frame such a power on a proper legal basis, it would be self-evident that the refusal was on the basis of forced marriage.

It is hard to conceive that the UK Border Agency could reasonably conclude that coercion was involved in the marriage without consulting the sponsor. Consequently, the reluctant sponsor would be exposed to exactly the same risk of family pressure or coercion that deters them from making an evidential statement.

Furthermore, refusals of marriage visas attract a right of appeal, which provides independent scrutiny of the UK Border Agency's decision. Immigration judges have a duty to disclose any information they hold to the rest of the court (which might include the victim's family), so the UK Border Agency is unable to share a sponsor's privately stated reluctance with the judge on a confidential basis.

Despite consultation with immigration judges, we have been unable to devise a means of enabling an immigration judge to uphold a refusal on the grounds of forced marriage where the sponsor is unwilling to make a public statement, without compromising the fairness of the appeal system.

The FMU and the UK Border Agency work closely together to gather further evidence to refuse the visa where appropriate. However, if there is no public statement, the UK Border Agency may only refuse the visa if there is other sufficient evidence that the immigration rules are not met.

The following measures will assist in forced marriage cases, including those where a public statement is not made:

- The UK Border Agency may already refuse a visa without a statement if there are other means of showing that the immigration rules are not met, e.g. using information obtained from an interview or looking at documentary evidence which may reveal for example that the test of maintenance and accommodation under the immigration rules is not met.
- All entry clearance staff, including those who work in South Asia, have training on recognising forced marriage cases and what to do when these applications are identified.
- The minimum age for sponsoring or being sponsored for a marriage visa is 21, so applications where one or more of the parties are aged under 21 are automatically refused without any need for a public statement.

Comment 10: We are also surprised that estranged or abused spouses are routinely treated as ‘third parties’ under the Data Protection Act by the UK Border Agency in respect of their partner’s application for indefinite leave to remain. While we recognise that data protection issues must be taken into account, there are instances where exemptions can be made and the Agency is therefore permitted to disclose information to a spouse. We were pleased to note the Information Commissioner’s assertion that the Data Protection Act recognises that sometimes it is appropriate to disclose personal data in circumstances which would otherwise breach the Act. The UK Border Agency should acknowledge this, and encourage its staff to make decisions about disclosure on a case-by-case basis, with the aim of ensuring that British spouses have every opportunity to alert the immigration authorities in confidence to cases of marriage breakdown. Clamping down on these immigration abuses is essential first and foremost in order to protect current and future victims of forced marriage, but also to form part of a controlled immigration policy. (Paragraph 39)

Government Response

The Data Protection Act 1998 (the DPA) sets out the criteria that govern the processing of personal data relating to living individuals and also provides individuals with certain rights relating to the processing of that data.

The DPA recognises that it may also be appropriate to disclose personal data in circumstances which would otherwise breach the Act. This would be where there was an overriding reason to disclose the information.

There is extensive UK Border Agency guidance on the general application of the DPA, and specifically the potential disclosure of information to third parties. This guidance makes it clear that where a request is received from a person other than the data subject or another public body, the request must be considered on a case – by – case basis under, and handled in accordance with, the UK Border Agency’s powers to share data, the DPA, Human Rights Act 1998, the Freedom of Information Act 2000, and the common law duty of confidence.

The guidance notes that, given these legal obligations, such “third party” requests would usually be refused in order to protect the privacy rights of the data subject, although there would be circumstances in which disclosure would be allowed. Where personal information about an applicant cannot be disclosed UK Border Agency staff are advised to always consider whether to provide any general information, which is relevant to the request.

UK Border Agency guidance already makes it clear that, in certain circumstances, specific personal information on a data subject can be provided to a third party. Such circumstances could include:

- MPs acting for constituents;
- Estranged/separated spouses or civil partners of applicants;
- Victims (or the victim’s family) of foreign national offenders;
- Sponsors.

UK Border Agency staff are therefore encouraged to consider the merits of each request on a case - by - case basis with regard to the information requested and its associated sensitivity. This approach has recently been endorsed by the Information Commissioner who acknowledged the need for appropriate caution to avoid inappropriate disclosure.

The UK Border Agency has now begun a review of the guidance to:

- Clarify roles and responsibilities;
- Clarify what specific information may (or may not) be provided;
- Re-emphasise that such requests must be considered on a case – by – case basis.

This updated guidance will be promulgated widely, as well as to UK Border Agency’s Data Protection Unit, which is responsible for processing all subject access requests. We will also ensure that the UK Border Agency’s MPs Liaison Unit and the Immigration Enquiry Bureau are updated accordingly.

Comment 11: Specialist services run by the voluntary sector provide a vital means of support to individuals at risk of forced marriage, who are often failed by statutory agencies or do not feel able to approach them; 63% of the thousands of callers to the Honour Network Helpline do not contact statutory agencies. We understand that a number of such specialist services, including the highly-respected organisation Southall Black Sisters and the Honour Network Helpline run by Karma Nirvana, are under threat of closure due to

potential withdrawal of funding from Government or local authorities. It is our view that the Government should urge local authorities to support these local services and both Government and local authorities should move quickly to make funding decisions affecting these services. The closure of these services would materially damage the UK's ability to protect and support victims and potential victims of forced marriages, and the Government should take steps to avoid this outcome. (Paragraph 43)

Government Response

The Home Secretary and the Secretary of State for Communities and Local Government have made clear that Local Authorities must not see the voluntary sector as an “easy cut” when making difficult decisions about spending.

In April 2011, the Government announced a consultation on the proposed Best Value guidance (replacing nearly 80 pages of prescriptive statutory guidance with a single page), which sets out clearly the way that councils should work with the voluntary sector when facing difficult funding decisions. The consultation has now closed and the Government plans to publish finalised guidance in the summer.

The Home Office and MoJ have already made available long term funding for specialist services for victims of domestic and sexual violence and we have strongly encouraged local areas to follow our lead.

In 2010 the Government funded Southall Black Sisters for its “Work Programme for Prevention Project in Schools”. This project was funded for a year and ongoing funding is now the responsibility of the local authority.

The Honour Network helpline was also funded by the Government for a year in 2010, to support victims of forced marriage and honour-based abuse. Karma Nirvana has applied for three year funding from the Ministry of Justice's *Victim and Witness General Fund*. The MoJ has made an offer to Karma Nirvana which will see the continuation of the helpline service for the next three years.



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