

The Forced Marriage Act 2007: one year on.

This paper examines the impact of the Forced Marriage (Civil Protection) Act 2007 (FMA) during its first year, provides the available figures on its use so far, presents feedback from those involved and identifies gaps in practice and provision.

Forced marriage is not the same as an arranged marriage where both spouses can choose whether or not to accept the arrangement. In forced marriage, one or both spouses do not (or, in the case of some adults with disabilities, cannot) consent to the marriage and physical, psychological, sexual, financial and emotional pressure is involved. Sexual intercourse without consent is rape, regardless of whether this occurs within a marriage or not. A woman who is forced into marriage is likely to be raped and may be raped repeatedly until she becomes pregnant. Some victims are taken overseas to marry while others may be married in the UK.

Forced marriage is now recognised in the UK as a form of violence against women, as domestic or child abuse and a serious abuse of human rights. Some victims have been as young as 9 years old, clearly a child protection issue, others involve older adults where their capacity to consent is the main issue.

The Forced Marriage Act 2007 was implemented on 25 November 2008. It allows family courts to make a Forced Marriage Protection Order (FMPO) to prevent a forced marriage from taking place, or if it has already done so, the courts can make orders to protect the victim and help remove them from that situation. The order may contain prohibitions, restrictions or requirements or anything else the court thinks the situation warrants. The Forced Marriage Protection Order (FMPO) appears to be working well alongside other measures for protecting adults from domestic abuse (particularly the non-molestation orders) and Children Act measures for child protection.

In 2008 the Forced Marriage Unit dealt with over 1600 reports of possible forced marriage and 420 of these became cases. Between November 2008 and October 2009 86 applications for Forced Marriage Protection Orders were made, more than expected.

Examples of the types of orders the court may make are:

- to prevent a forced marriage from occurring;
- to hand over all passports (where there is dual nationality) and birth certificates and not to apply for a new passport;

- to stop intimidation and violence;
- to reveal the whereabouts of a person;
- to stop someone from being taken abroad;
- to facilitate or enable a person to return to the UK within a given time period.

Orders are usually for one year or til majority.

Orders may also be made against other people who are involved within the wider community and the court may add a power of arrest where violence is threatened or used. Breach of an order made under the Act is not a criminal offence, but can be dealt with as contempt of court with punishment including imprisonment for up to two years. Individuals may also be subject to separate criminal proceedings. So far no breaches have been recorded.

Fifteen county courts around the country have been chosen to deal with applications for Forced Marriage Protection Orders based on the demographics of the local communities. Applications may also be heard at High Court level. Two thirds of the orders were made in just three of the designated courts with seven other courts making between 1 to 3 orders.

Victims of forced marriage are often unable to protect themselves and the Act created the role of the Relevant Third Party (RTP) who can make an application on behalf of a victim of forced marriage without the need to obtain the permission of the court beforehand. Since November 2009 local authorities have had the responsibility for this role and are currently the only designated Relevant Third Party, but anyone else, an individual family or friend or agency, such as the police or voluntary support service, can still make a third party application with leave of the court.

Guidance is available at: <http://www.justice.gov.uk/guidance/forced-marriage.htm>.

Impact:

Children and adult services:

It seems that many local authorities are still not fully aware of either their role or the potential benefits of the Act. The function and benefit of a Forced Marriage Protection Order should be considered as part of child and adult protection, not as an alternative. This may be partly due to lack of information and training, with examples of uncertainty by social workers while the police go ahead and successfully achieve an order. There is a general view that social workers are more hesitant and in some instances, reluctant, to apply to the courts. Particular concerns were expressed in one area about the reluctance of social services teams working with vulnerable adults to engage with the Act.

There are a number of reasons for this; some of the girls in the age group soon to be leaving care, are not adults in need of protection, and therefore might fall between the work of the different social work teams. Wider use of the At Risk Register for possible Persons to be Protected (PTBP) might be a way forward.

There is recognition that the Act brings with it a number of challenges; how to offer ongoing assessment and support for young women and men in an age group which lies on the boundaries between work in child protection and with vulnerable adults; and the tensions within practice; particularly in relation to mediation, family assessment and involvement, none of which may be the right approach in cases of Forced Marriage.

There is concern from the courts about the lack of awareness in some care proceedings of forced marriage within wider family issues and the effect on other members of the family, particularly siblings who may also be subject to the same treatment in the future. In other cases there are concerns that social workers do not understand the seriousness of the situation.

In some areas there is local authority enthusiasm about the Act, its' simplicity and effectiveness, but at the same time a recognition that new legislation often takes time to become an integral part of practice. The multi-agency practice guidelines (often referred to as 'the Home Office guidance') are helpful, for example, in picking up on requests for late terminations of pregnancy, or children expressing anxiety to teachers about school holidays.

Local practical difficulties can range from the operational issues facing Cafcass, the need for independent interpreters, but also more general difficulties in child protection work with Asian families who tend not to come through the normal channels on child protection issues.

Police:

The police are very positive about the provisions and procedures of the Act and value the FMPO as a simple procedure which provides an effective defense against future pressure and prevents possible honour based violent crime and they. However many are not optimistic about awareness in the general population or amongst other agencies and are anxious that others involved in the process often do not realise the urgency of the situation. Their primary concern is to keep the victim, any other younger siblings and family members safe and to prevent any future Honour Based Violence. Their work involves dealing with kidnapping, installing fire proof letterboxes, taking DNA samples, using code words, and often taking these measures for a long time, keeping in touch with some victims over a period of years.

The victim's testimony is crucial and the police are acutely aware of the immense pressure on victims from family members to back down or seek variation of an order. They understand very clearly the impact on the individual victim of taking action; one officer said he had seen 40 girls leave and 20 go back.

Courts:

The judges are very aware of the need for the protection offered by the orders and see the procedure as quick and effective, applications have arisen from a very broad range of circumstances within the UK as well as abroad and also cover Court of Protection issues. Sometimes the problem reflects generational and cultural conflict between parents and children rather than protection but, especially in those areas where applications have been very low, there is also anxiety that not everyone realises the urgency or seriousness of the situation. People are still afraid to use the court process, despite active police encouragement, and victims are often afraid to give evidence against relatives. There remain many local concerns about stigmatising the minority communities, and in addition, there are also worries about the safety of the judges, court staff, and legal representatives.

Solicitors and barristers are likewise positive about the Act, and have seen the benefits of using a civil rather than a criminal setting, which in many cases has led to rehabilitation with the family.

Summary of key points:

- The Act is being used and is seen as a quick, straightforward and effective process
- But the degree of use is very varied and there is concern about underuse in some areas due to fear of approaching the courts, and fear among some agencies of offending the local communities.
- The police are the main players, using FMPOs as both emergency intervention and as providing preventative protection, preventing further Honour Based Violence
- Judges and court staff are becoming more familiar with the process and developing standard templates. Third party applications are welcomed and funding issues are not holding things up.
- Some local authorities have been slow to get involved, and there is lack of clarity about the boundaries between care proceedings under the Children Act, Court of Protection cases, and Forced Marriage cases. The Act does not always sit well with social services working methods.
- There is a need for continuing publicity especially within the communities, for training, and for better interagency cooperation, especially involving schools and education settings.
- There is a need for caution and understanding of the impact of an application on a young person who then loses family relationships and community networks and will need long term protection and support. This needs to be planned for.
- Community and religious leaders should be more proactive and use their position to challenge practice and individuals. Those in a key position of influence and trust within their community are not using this power effectively, but rather acting as 'gatekeepers'.

Next Steps:

The Ministry of Justice will continue to monitor the use of the Act and the level of orders made; there will be consultation with the police to gauge support for them to be made Relevant Third Party from 01 April 2010. More work needs to be done to reach the more closed traditional Black, Asian and Minority Ethnic (BAME) communities and to encourage them to hear and respond to the messages. A pilot has been set up to explore the role of Independent Domestic Violence Advisers (IDVA) linked to the Specialist Domestic Violence Court (SDVC) systems and to assess their potential to also act as Relevant Third Party.

Ref:

[One year On: the initial impact of the Forced Marriage \(Civil Protection\) Act 2007 in its first year of operation](http://www.justice.gov.uk/publications/docs/one-year-on-forced-marriage-act.pdf)

<http://www.justice.gov.uk/publications/docs/one-year-on-forced-marriage-act.pdf>

Further information:

Information on funding issues for forced marriages has been provided to local offices and practitioners on the Legal Services website.

http://www.legalservices.gov.uk/docs/fains_and_mediation/forcedmarriagefundinginformation221208.pdf

HM Government Multi-agency practice guidelines handling cases of forced marriage – June 2009:

<http://www.fco.gov.uk/resources/en/pdf/3849543/forced-marriage-guidelines09.pdf>

Practitioners handling forced marriage cases can also call the FMU for advice and support.

Telephone 020 7008 0151 between 9am-5pm Monday to Friday or email the Unit at fmu@fco.gov.uk

During out of hours, call 020 7008 1500 and ask for the Foreign and Commonwealth Office Global Response Centre.