



The Law Society

**Forced Marriage Consultation Response**  
**Law Society of England and Wales**  
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## Introduction

The Law Society is the representative body for more than 140,000 solicitors qualified in England and Wales practising both at home and across the globe. The Society promotes the interests of the profession by providing advice, training, products and services to its members. It works to develop new legal markets and international networks through representation to governments, regulators and the wider business community.

## Summary

The Law Society is in favour of making both forced marriage and the breach of Forced Marriage Protection Orders (FMPO) criminal offences. This would provide certainty to victims and would send a strong deterring signal to potential offenders. It would also ensure that victims who are emotionally coerced into a forced marriage have a means of legal redress and facilitate the prosecution of forced marriages.

The police recorded 2823 honour attacks in the UK in 2011. During the first two years and four months after the Forced Marriage (Civil Protection) Act 2007 came into force of the 293 FMPOs that were made, only one order was enforced with a jail sentence for breach.

Some communities do not recognise or accept that a forced marriage is not legitimised by either culture or tradition: it is another form of bullying, violence and abuse. It is unlike an arranged marriage which is traditional, cultural and, crucially, consensual for both parties who are introduced to one another and who then have the choice of whether to marry or not. Criminalisation of forced marriages would make this distinction clearer.

Combating forced marriages will require more than a robust legal response framework. All the agencies involved, including the police, the Crown Prosecution Service (CPS), schools, local authorities and social workers must be fully aware and supportive of the new legal framework, and in turn must be supported by training, education, and funding.

## Questions

**Do you think that the model for breaching FMPOs should follow that for breach of non-molestation orders? Specifically:**

**– should it be an offence to breach any/all provisions contained in the order; with no specific power of arrest required;**

The Law Society supports making a breach of the provisions in an FMPO a criminal offence. 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.

FMPOs are often complex, and serious consideration has to be given by those representing the PTBP (Person to be Protected) to the provisions required to afford adequate protection. Some PTBPs require more protection than others, and every element of the FMPO can be important to their safety.

Often an FMPO will relate to more than one person. The more certain it is that the breach of each provision is an offence, the clearer the Order will be to those who are required to abstain from forcing the PTBP to enter into a marriage against their will.

The Forced Marriage Protection (Civil Protection Act) 2007 places the onus on the PTBP to report any breach of the Order, which means that the PTBP finds himself/herself under immense pressure at a time when they are already likely to be stigmatised by their community for taking action against their parents. Any PTBP who instigates proceedings for a breach of a FMPO will face an adverse reaction from those they are closest to and from their community. Many PTBPs retract after making the Order because of pressure from other family members and because friends are no longer speaking to them, leaving them isolated.

Criminalisation will help to send out a strong message that breaches have serious consequences.

**– if the CPS 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; and**

As a criminal matter the burden of proof lies with the CPS to prove that the defendants have breached the provisions of the Order.

The CPS will need to ensure that its staff has received adequate training to help them to understand PTBPs. Hesitancy and reluctance on the part of the PTBP in making a statement should not be interpreted as lack of evidence or credibility, but rather as fear. It is important that the PTBP is informed about what will happen to them if the case is successful and family members are convicted.

If the CPS does not have enough evidence to pursue the case, victims should have the option to return the case for committal in the civil court. Here the burden of proof would be on the PTBP to show that the provisions of the Order have been breached, so the reality is that if the CPS fails to progress the matter, the victim will be greatly disheartened and will view the protection offered to them as having failed: they may be unlikely to go through a Court ordeal again.

**– what penalty should apply for the maximum sentence for breach of an FMPO (in England and Wales breach of a non-molestation order or a restraining order currently attracts a maximum sentence of five years).**

This should be the same as that for the breach of the non molestation order (5 years).

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

No. The model in England and Wales works well and the FMPO should mirror the way that non-molestation orders have developed.

**Do you think that other named respondents who knew that an order had been breached but did nothing should also be liable to prosecution for breach of an order? Please explain your answer. If yes, what level of involvement should attract such prosecution? What scale of penalties should apply?**

Yes. If other respondents have been named in the Order they should be liable to prosecution if they are likely to have known that the provisions of the FMPO have been breached. Very rarely will there be only one respondent in a FMPO. It is much more likely that a group of individuals will have engaged in coercive behaviours which may be emotionally, financially or physically abusive.

The PTBP is likely to suffer psychological and emotional abuse, for example with family members making threats to take their own lives if the PTBP fails to engage in the forced marriage ceremony.

All those named should therefore be held accountable if the Order is breached. Many respondents will be close family members and it is likely that each will be aware of the actions that the others have taken. Accordingly, it should be made clear that each of them will be held responsible for the breach of the FMPO. For example, a named respondent who booked the tickets and arranged the flights out of the UK cannot then claim that they had no knowledge of Order being breached and that the likely outcome would be the forced marriage of the PTBP.

The scale of penalties should be up to the same maximum as in non-molestation orders. The penalty should be dependent upon the level of involvement in the breach, but this can only be decided on the facts presented in a particular case.

**What mechanisms, if any, do you feel would assist victims and witnesses, particularly the young, in disclosing the breach of an order? Please explain your answer.**

One of the key failures in dealing with the breaches of FMPOs is the manner in which they are monitored. Once an FMPO is made the view seems to be that the issue has been dealt with and the victim is protected. The making of the FMPO is just the start of a carousel of events for the PTBP.

Agencies such as local authorities and schools, which engage with the PTBP, must ensure there are systems in place for checking on the PTBP's welfare. Support and assistance must be available to prevent them from being drawn back by the family.

Despite what may have happened, the PTBP will often still love their family and would rather return to them than be isolated and live in fear. To be removed from the family can be an isolating process for many young victims, whether boys or girls. Mechanisms and procedures should be in place at schools/colleges/universities to be made aware of the FMPO. There should be a named contact in schools/ colleges/universities for the subject of an FMPO to approach.

School is often the place where the PTBP may feel secure and able to talk about what is happening to them. Training must be given to ensure that staff do not alert the family about reports that the PTBP may have made, which will trigger action by the family against the PTBP. There should be guidance available to the schools/colleges/universities on how to deal with a child who is in danger of being forced into a marriage.

If the police or another agency instigated the application for the FMPO then they must provide a means of monitoring the PTBP and make calls and visits to their home to check on their well being. The PTBP must be physically seen by the police or other agency worker. The mechanisms that currently exist vary from agency to agency and there should be protocol which would ensure that every agency deals with the breach of a FMPO consistently.

It is often the case that once the FMPO is made there are no follow up procedures put in place. The respondents will therefore wait for the situation to calm down, and when a few months have passed they may start to intimidate the PTBP again and this time the actions will be harsher as they are aware that the PTBP previously obtained a FMPO. Young girls and boys in this position may be locked up in their own homes. When schools are aware that a child who is at risk has not attended, mechanisms must be in place to report such situations to the police who can then take further action if necessary.

The key is to ensure that support is available to the PTBP so that they can seek help before their removal from the UK. This requires schools in particular to be able to recognise warning signs. A key sign is the experience of siblings: did older siblings leave school early, marry and have children young? Did they live abroad or marry outside the UK?

Preventing the removal of the child from the UK before a forced marriage occurs is the best course of action, but being alerted after the event can help the FMU assist with the return of the PTBP to the UK.

For example, a girl may return from the summer holidays with a stark difference in their appearance and behaviour. This is one of the most dangerous times for children to be taken abroad and forced to marry against their will. In that six weeks no one may notice their disappearance, but the child returning home after such a marriage is not the same. They will have been forced to engage sexually with their husbands, and they may be pregnant. On their return the pressure does not end: the families then want them to sponsor their husbands, leave school early without completing their educational ambitions to obtain employment and secure their husband's visa so that he can enter into the UK.

Training individuals, agencies and police to understand the fear and the isolation that the PTBP will feel is the key to ensuring that effective monitoring is undertaken. If the PTBP is not able to be seen, the agency should be alert that there may have been a breach of the FMPO.

The Home Office must ensure that UK border officials are aware of who is a PTBP to prevent their removal from the UK. If records were kept of individuals who are subject to a FMPO there may be a mechanism in which visas can be refused until such time the agency that made the FMPO confirms that the PTBP is not at risk and can be given a visa. The more difficult it is to remove the subject of the FMPO from the UK, the more difficult the practice of taking children abroad to be forcibly married.

**Do you feel that any other mechanisms, in addition to existing special measures (e.g. video-recorded statements, live links, screens) in court, 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? If yes, please explain your answer, giving examples of the types of mechanisms and resources needed.**

Yes. Any measures that assist the PTBP in avoiding having to come face to face with the family would be helpful. One of the most powerful feelings that a PTBP has is guilt. The PTBP will very likely have been raised to believe that the Izzat (honour) of the family is of the highest importance. The PTBP will often feel that they have brought shame upon their parents within the community by their actions.

The concept of Izzat is behind honour based violence and crimes. In some families the Izzaat is their single most important attribute and anyone failing to conform to parental instructions accordingly may be killed or beaten, and subjected to coercion until they conform.

Video recorded statements, live links and screens would help victims. The PTBP should not have to attend the court as others may be waiting outside the court who have been instructed to follow them. Some families will not hesitate in ordering an honour killing as those who carry this out would be considered honourable men in their communities. If the Izzat is protected, the family may even be held in high esteem.

Other possible aids are the use of voice distortion, and witness protection programmes. These measures could provide the PTBT with security and protection at the time that they need it most.

Often fear is the reason that many will return to the family after taking out the FMPO - the fear of being caught and killed by the family in the name of honour, and guilt over what their siblings may be put through to restore the family honour.

Interpreters can help but care needs to be exercised as if the interpreter is from the same community, as this may unintentionally place the victim in danger. Visits to and out of the court room before and afterwards in the event that attendance is a necessity may help to ease the PTBP's fears.

Multi-agency risk assessments can assist in finding support for the PTBP. These assessments can help with counselling, re-housing and access to benefits and support groups. The PTBP can then seek support as they require, and know who to contact. Many find that following the FMPO they are placed in temporary housing and then no one visits them. They do not know who to contact for help with benefits and often they have no money for food and clothing. This is another factor that isolates and frightens the PTBP.

**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?**

No, the current civil remedies and criminal sanctions are not being used as effectively as they could in tackling forced marriages. However, they should continue to be used alongside the criminalisation of forced marriages.

The FMPO serves no purpose if a breach of the order is not reported. Currently the onus is on the PTBP to report the abuse. The agencies that are involved may have an abuse reported to them but do not always respond by returning the matter to the court.

Care has to be exercised when looking at why agencies are not enforcing Orders, but there appears to be too much variation on how breaches are dealt with. To report a breach of the Order the PTBP must have confidence in the system for as long as a breach is not a criminal offence there is too much onus on the PTBP to report the breach and return the matter to the court. If a breach is treated as a crime, the police can arrest the individual concerned and deal with them in the same way as non-molestation orders.

An FMPO is a serious matter and support networks must be put in place for the PTBP after the order is made. The most common factor in not reporting the breach will be either that the victim has returned to the family due to fear or that they are simply too scared to report the matter. They will often be alone having come from a large close knit family.

There should be discussions with the PTBP about their ability to cope after the FMPO has been made, and what services or networks can be available (for example friends from outside their community). A regular outreach service should be available to the victims so that they can call on support in the event that they require it in confidence. Checks should be made on the PTBP's wellbeing.

Potential victims should be educated about forced marriages and the protection that is available to them. Education should start at a young age. Children at risk must be given a way of communicating their fears (for example with an individual within their school) so that appropriate safety measures can be put in place. Many will struggle with the decision to obtain a FMPO and will often chose to return to the family and conform rather than live their life in the fear that they will be found.

See <http://www.karmanirvana.org.uk/farahs-story.html>

**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?**

Yes. The definition would have to address most importantly the absence of consent of one or both parties. The definition must include reference to the use of coercion such as physical violence, duress, emotional blackmail, kidnapping, threats, abduction and confinement. The definition used by the Home Office and the Department for Education defines forced marriage as '**A forced marriage is a marriage in which one or both spouses do not (or in the case of some adults with learning or physical disabilities, cannot) consent to the marriage and duress is involved. Duress can include physical, psychological, financial, sexual and emotional pressure.**'

This should be reflected in any definition of a criminal offence.

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

The main issue is to increase awareness of the help that is available for victims of forced marriage. Often it is the 'community' that is given the information, possibly the very same people who do not want their children to be educated or made aware about the help available.

Education must start in the schools. This is the place where children spend most of their time without their parents being able to influence them unduly. Staff must be educated to spot the signs of a child – both boys and girls – at risk for who may recently have entered a forced marriage. Witness protection programmes may need to provide more thought to how they accommodate victims of forced marriage - for example, placing a child within the same community could mean that they are very likely to be found.

The reporting of the crime or the breach of a FMPO will usually lie with the PTBP. So it is down to the strength of the individual as how far they wish to seek protection. No matter how abusive the family are, the PTBT will have a difficult time in separating their loyalties and duties to their family against the choice to live their life the way that they want to. Living in constant fear of being found may influence a PTBP's decisions, who may return to the family and decide it is better to live the way that they want them to rather in fear.

**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?**

Yes. Often the victim is lured abroad on the pretext of a holiday, attending a relative's weddings, or visiting a sick/elderly relative. These hide the real reason for the visit which is a forced wedding usually against the knowledge and will of the victim. Those who are aware of this and lure the victim away from the UK should be held accountable.

See <http://www.fco.gov.uk/en/travel-and-living-abroad/when-things-go-wrong/forced-marriage/forced-marriage-animations>

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

The victim's circumstances will have a significant influence on their attitude towards seeking protection. Age will have a bearing as the younger the child the more likely they will be to do as the parents direct. An 8 year old will not be able to protect themselves as well as a 16 year old. Children from communities where forced marriage are common grow up with expectations placed on them from an early age. Forced marriage is unlikely to be alien to them and they may have seen members of their family ostracised and disowned.

Other factors that affect the family such as poverty, gender inequality, religious and cultural practices and failure of law enforcement can all contribute to a PTBP being placed in a situation where forced marriage is more likely – but educated families can be just as likely to force their children into a forced marriage as are those that have little education. The most important issue in preventing forced marriages is to raise awareness amongst those that who are in contact with the children regularly. Education must start at school and children should be provided with the information and facilities that can help them. The stories below demonstrate the diverse range of individuals who have faced forced marriages. It is difficult to define one group or individual as more likely to suffer from a forced marriage than another, although it is worth noting that Lesbian and gay people can be forced into marriage because of their sexuality.

<http://www.ashaforcedmarriage.org.uk/case-studies>  
<http://www.karmanirvana.org.uk/survivor-stories.html>

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

Yes. There are many victims of forced marriages and all too often there are no sanctions on those responsible. The law should give a clear message that if a person forces another into a marriage they are committing a criminal offence.

This should be accompanied by media coverage and raising awareness amongst schools, colleges, police, social services and other agencies.

The new law would also ensure that those religious leaders that are willing to marry two people knowing that one does not consent will fear that if reported they will lose their honour within the community. If the law is clear in that all those involved are likely to face a criminal sanction then it is more likely to act as a deterrent.

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

Yes. If a forced marriage has taken place and such an act is a criminal offence much of the burden that is placed on the individual in initiating action is removed.

Any agency working with victims or potential victims of a forced marriage must be culturally aware of the practices that exist within high-risk communities and be able to understand and report any imminent dangers to the authorities.



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

It would send out a powerful message that a forced marriage is not acceptable. It is unlikely to change the deep-rooted opinions within those communities, nevertheless it could serve as a deterrent, and for that reason we support criminalisation.