

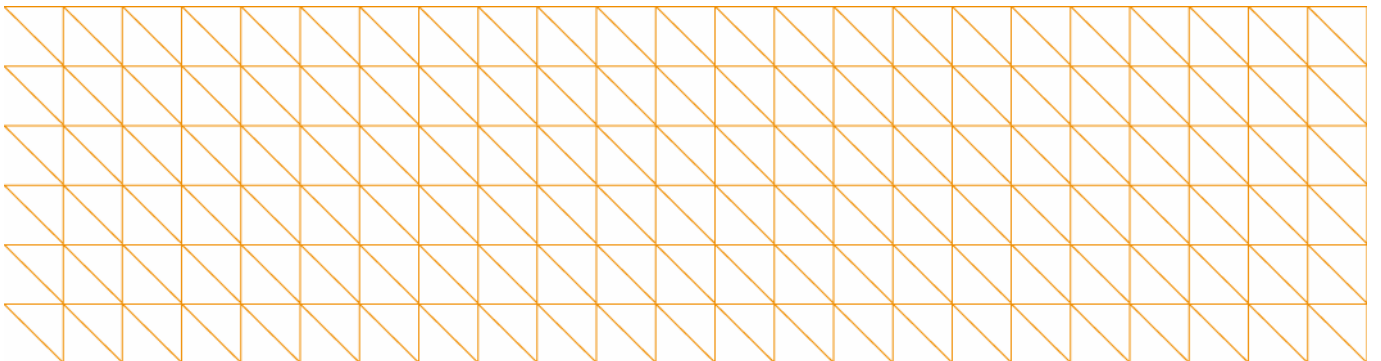


# **Forced Marriage (Civil Protection) Act 2007 – Relevant Third Party**

**Response to Consultation**

CP(R) 31/07

13 November 2008





Ministry of  
**JUSTICE**

## **Forced Marriage (Civil Protection) Act 2007 – Relevant Third Party**

**Response to consultation carried out by the Ministry of Justice.**

**This information is also available on the Ministry of Justice website:  
[www.justice.gov.uk](http://www.justice.gov.uk)**

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## Introduction and contact details

This document is the post-consultation report for the consultation paper, Forced Marriage (Civil Protection) Act 2007 – Relevant Third Party.

It will cover:

- the background to the report
- a summary of the responses to the report
- a detailed response to the specific questions raised in the report
- the next steps following this consultation.

Further copies of this report and the consultation paper can be obtained by contacting **Janice Stevenson** at the address below:

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This report is also available on the Ministry's website: [www.justice.gov.uk](http://www.justice.gov.uk).

Alternative format versions of this publication can be requested from [Forced.marriages@hmcourts-service.gsi.gov.uk](mailto:Forced.marriages@hmcourts-service.gsi.gov.uk)



## Foreword



When we published this consultation the aim was to receive a wide range of views on the important question of who should act as the relevant third party as provided for by the Forced Marriage (Civil Protection) Act 2007 (the Act). I am delighted that so many of you responded and gave us your comments.

Many of you recognised that those who make an application on behalf of others take on a significant responsibility, not only for ensuring that the case is properly brought before the court, but also to act in a manner that helps and supports the person who is in need of protection. We considered these views carefully before reaching a conclusion. This response tells you what we have decided to do and how we will achieve this.

Forced marriage is a marriage without the full and free consent of both parties. It is a form of domestic violence and an abuse of human rights. We have made substantial progress tackling forced marriage and we are proud of what we have achieved so far, but we know there is much, much, more to do. I hope the Act will help more victims come forward and show all communities that forced marriage will not be tolerated.

Thank you for your continued support in tackling forced marriage.



**Bridget Prentice**

## Background

The consultation paper 'Forced Marriage (Civil Protection) Act 2007 – Relevant Third Party' was published on 12 December 2007. It invited comments on the role of the relevant third party, a position created by the Act that enables a person to apply for a forced marriage protection order on behalf of a victim of forced marriage.

The Forced Marriage (Civil Protection) Act 2007 (the Act) comes into force on 25 November 2008. The aim of the Act is to provide protection to those at risk of forced marriage and to provide recourse for those who have already been forced into marriage. The Act also sends out a strong signal that forced marriage is unacceptable and will not be tolerated.

Under the Act, a person who is being or has been forced into marriage may apply to the court for a forced marriage protection order. The court can order the behaviour or conduct of those forcing another into marriage to change or stop, or impose requirements upon them. If a person fails to comply with the court order they are dealt with under the courts' powers of contempt of court and may be sent to prison for up to two years.

The Act enables a victim of forced marriage to apply to the court for an order. It also enables anyone to make an application for a forced marriage protection order if they obtain the court's permission. A relevant third party may apply for an order on behalf a victim of forced marriage and does not need to obtain the permission of the court. An organisation or person can only become a relevant third party by order of the Lord Chancellor.

The consultation asked what need there was for relevant third parties, what type of people or organisations should act as a relevant third party and what safeguards were needed. It also invited practical suggestions on how the making of an application can be adapted to meet the needs of those who use the Act.

The consultation period closed on 14 March 2008 and this report summarises the responses, including how the consultation process influenced the final development of the policy consulted upon.

A list of respondents is at Annex A.



## Summary of responses

1. A total of 55 responses to the consultation paper were received and there was a wide range of respondents. Approximately 17% of responses were received from local authorities including the Welsh Assembly Government, 14% from children's rights or child protection organisations, 10% from black minority and ethnic support organisations or religious organisations, 10% from the legal profession and the judiciary, 9% from religious organisations, 9% from women's support groups and 7% from academics and 5% from Government departments or agencies. The remainder of the responses came from two members of the House of Lords, an MP, the police, a professional association, learning disabilities charities (joint response from 3 organisations), a member of the public, and a human rights organisation.
2. The consultation asked questions on the new role of the relevant third party. As the Act has yet to come into force, the consultation was aimed at gathering a wide range of views from all those with an interest in this work. The responses were analysed to find the key themes seen as important to the role of the relevant third party.
3. For adult victims, respondents generally believed that a relevant third party should act when a victim was unable to do so, for example, if imprisoned or overseas. Some respondents saw informed consent by the victim as a prerequisite in most cases as well as a safeguard for them, and questioned the appropriateness of proceeding with an application under the Act in the absence of this. Others noted the dangers of proceeding when there was a risk that the victim would be further endangered. There was divided opinion over whether the relevant third party should be seen as a measure of last resort or whether they should act in many different types of circumstances.
4. Respondents saw a mixture of both public sector organisations and voluntary sector acting as a relevant third party for adult victim, with a small majority favouring the public sector. Those who favoured public sector organisations felt that they had the resources and accountability to undertake the role. Conversely, voluntary organisations were seen as having the trust of the victim and understanding the dynamics of forced marriage. An analysis of those who responded showed that it was the public sector organisations that identified themselves as an appropriate organisation to act as a relevant third party.
5. The role of the court was seen as a key safeguard for adult victims and around a fifth of respondents suggested that there should be an initial

scrutiny or leave process before proceeding with a full application, notwithstanding that the Act does not require this for relevant third parties. A robust legal and procedural framework was also seen as important to protect the victim's best interests.

6. Respondents also saw a clear need for safeguards to ensure that the relevant third party acted in the best interests of the victim. The need for competent, professional and appropriately resourced relevant third parties was widely mentioned. This could be achieved by, for example, the relevant third party acting in accordance with clear criteria and guidance, subject to evaluation, trained in the dynamics of forced marriage and supported by appropriate legal skills and knowledge. An absence of funding was seen as a barrier to achieving this.
7. For children, the key theme that emerged was the need for the relevant third party to act as part of, or consistent with, existing child protection policies. Some respondents expressed the view that the safety of the child should be the paramount concern and believed that where children under 16 were facing forced marriage it should automatically be dealt with as a child protection issue. The majority of respondents who commented on children named local authorities as suitable to act as relevant third party, given their existing responsibilities in relation to child protection.
8. Responses on the question of how to adapt the court administration to meet the needs of those who use the Act was widely commented upon. The most frequent comments were on the need for interpreters, availability of security measures to protect the victim when coming to court or giving evidence, training for court staff and the judiciary (to include the context and background to forced marriage) and the need for confidentiality. The provision of public information in different languages and in a format that is accessible to children and those with learning difficulties was also raised.

#### Scope of the consultation and response

9. The consultation focused on the role of the relevant third party. It also invited practical suggestions on how to ensure that the court administration could be adapted to meet the needs of those who would use it. The Government has previously consulted on the wider issue of whether to criminalise the behaviour that leads to forced marriage. This response does not comment on any issues raised by respondents in this regard. Nor does it comment on wider issues raised including the definition of domestic violence, entry into the UK on marriage visas, or the use of pre-marital preparation programmes.
10. As stated in Parliament during the passage of the Act, the legal aid criterion that applies to victims of domestic violence will also apply to

victims of forced marriage who make an application for a forced marriage protection order. This means that contrary to what was stated in the consultation paper, there will now be no changes made to the Legal Aid Funding Code in this regard and therefore no additional consultation by the Legal Services Commission.

11. The fee strategy for forced marriage protection orders was set out in the original consultation for information and was not subject to the consultation. However, as it arose in the context of barriers to access to court, the comments received in this area are included in answers to question 8. The views expressed have been passed onto the relevant teams within Ministry of Justice who deal with fees policy and no further comment is made in this response.
12. There was much crossover of comment between individual questions. Whilst every effort has been made to separate the issues raised, it is inevitable that some overlap between the responses to individual questions occurs in the summary.

#### **Definition**

13. Within this consultation the person who is to be protected by a Forced Marriage Protection Order is referred to as the 'victim.'

## Responses to specific questions

### 1. In what circumstances is it appropriate for a third party to make an application on behalf of another? Are there circumstances where it is not appropriate?

Of the 55 responses, 47 responded to this part of the question. Most respondents identified more than one type of circumstance and gave various examples to illustrate the circumstances.

#### When is it appropriate for a relevant third party to make an application?

There was a broad measure of agreement about the need for provision of a relevant third party in the Act. Most respondents saw this as a necessary safeguard for those circumstances where victims could not act for themselves.

There were contrasting views expressed about the extent to which the circumstances could be defined. At least a quarter of respondents expressed the view that the need for relevant third party applications would only arise in exceptional circumstances. These cases were seen as the most important cases as these included victims who were most vulnerable and in need of support and assistance. However, other respondents felt that there should be little restriction on what circumstances should be considered appropriate.

The circumstances when it was felt appropriate for a relevant third party to make an application fell into seven broad categories as outlined below. Within these categories there were four types of situation that were described most frequently. These were:

- Where the victim is imprisoned or held against their will
- Where the victim is being threatened or coerced by use of physical or mental force
- Where the victim has been taken out of the country
- Where the victim lacks the capacity to act on their own because of their physical or mental condition or where the victim has a complex learning disability.

*'It may be appropriate for a third party to apply on a victim's behalf if the victim is physically unable to do so themselves e.g. the victim has been taken abroad, the victim is constantly watched by family members or there are restrictions on the victims freedom such as not being allowed out of the house unsupervised.'* The Council of British Pakistanis

A breakdown of the various circumstances described by respondents together with examples of what was suggested is given below.

- Where victim is being prevented from taking action, for example the victim is imprisoned or held against their will; they are watched or monitored by their family; not allowed to receive mail or living in a tightly knit community where actions would be reported on.
- Where victim is being intimidated or frightened or coerced for example threat to the victim of mental or physical harm; life of the victim or life of others in danger; threat of honour or shame for the victim; vulnerability or low self-esteem of the victim.
- Where it is best to distance the victim from the court process for example the victim does not want to instigate proceedings against their own family or community; the victim wants to be removed from process and have professional witnesses.
- Where victim needs the services of a third party to make the application for example the victim is out of country; is a vulnerable adult and is unable to act on their own or has severe learning disabilities or mental illness; the victim is a new immigrant and needs help; where there is no-one that the victim can trust or ask for help in their own community; the victim has no access to legal advice or support; the victim has a communication or language barrier.
- Where there are urgent/emergency situations that require rapid intervention for example the victim is about to be taken out of country; or a forced marriage about to happen.
- Where the victim asks for help from a third party for example the victim requests help with making an application; the victim wants a third party to take responsibility for decision; there is a clandestine request via a friend or relative on behalf of victim, the victim has lack of confidence in legal system and wants someone else to act.
- Where a third party feels there is a prima facie case supported by evidence that they should act for example the relevant third party may be aware that a marriage has been forced on someone; the relevant third party is aware a victim has been deceived into marriage; the relevant third party has evidence that a person will be forced into marriage overseas; a relevant third party is aware that victim is at risk of harm; where a registrar has completed a psychodynamic pre marital inventory and suspects forced marriage.

Organisations and individual respondents who had experience of dealing with cases described the pressures that may be placed on victims to comply with a forced marriage and how victims may not be able to access help easily or may be placing themselves in serious danger by doing so.

Some respondents saw the question of intervention tied with the provision of wider support.

*‘...protection orders will only be appropriate and effective in safeguarding victims where they are immediately accompanied by the provision of safe housing and appropriate support. If an application is brought, and the victim remains in the family home, they will be placed in significant danger. Therefore, before a decision is made about an application, evidence of the provision of appropriate accommodation and support must be shown to the court, or the court must direct that such provision is made available as part of its overseeing of the case.’*  
Fawcett Society

#### Are there circumstances where it is not appropriate?

Of the 55 responses, 28 responded to this part of the question, although not all respondents described the particular circumstances where intervention would not be appropriate. Therefore the numbers of responses described below appear to be lower than might be expected. There was no majority of significant agreement and a wide range of views was given.

There were two key areas that generated the most comment. Firstly, the question of gaining informed consent and the appropriateness of proceeding in absence of this. Secondly, the appropriateness of a relevant third party proceeding with an application where there was a risk that the victim might be further endangered.

A number of respondents felt the relevant third party should always try to get informed consent from the victim saying it would not be appropriate for a relevant third party to apply to court without trying to secure this first.

*As a starting point, one would not normally expect a third party to make an application against the wishes, or even possibility without the request, of a competent adult. Of course, there is a very fine line between consent and non-consent in these cases’* Association of District Judges

Some respondents expressed the view that applications made without the consent of the victim should be a measure of last resort in the case of adult victims, although the contrary view was also expressed. Some respondents from the voluntary sector emphasised the importance of enabling and empowering victims to make their own decisions. This included providing the support necessary to enable a victim to make the application personally.

Six respondents felt that it would be inappropriate for a relevant third party to make an application where the victim had said they did not want this. Some felt that it was not appropriate for a relevant third party to make an application on behalf of another without the court’s permission and provided some limited exceptions.

*'As a general rule, it is not appropriate for a third party to make an application on behalf of another without the court's permission. The only exception to the rule might be when the victim is not able to make an application herself/himself. This could be either because they are in confinement or abroad, or because they are a vulnerable adult. While the victim may not necessarily be able to give consent, the court should make every effort to obtain it through the third party; furthermore, in the absence of express consent, the third party should be required to explain how circumstances have led to the victim's being unable to give consent.'* Newham Asian Womens Project

Two respondents stated that an application would be inappropriate if it could be shown that there had been no attempt to seek the consent or views of the victim and there were no reasons given for the absence of this information. One respondent said it had to be shown that any applicant was well informed of the victim's circumstances and another said that if there were no evidence of coercion or force then it would not be right to intervene.

Four respondents commented that a relevant third party application would not be appropriate unless the victim was shown to have a lack of capacity to act for him or herself. However two responses cautioned against assuming that victims with learning disabilities might not be able to act for themselves if given the right assistance, or making the mistake of assuming that because someone had learning difficulties that the marriage must be forced.

Four responses described the need for a relevant third party to try to ascertain if the victim wanted or was able to bring the case for him or herself and said that it would not be appropriate for a relevant third party to bring a case in these circumstances.

There was concern expressed by eight respondents about the appropriateness of a relevant third party going to court in cases where this could increase the danger of serious harm to the victim. All these respondents described the need for a range of safeguards and support measures to be in place for the victim to prevent this. The key point was that the safety of the victim should be the paramount concern.

*'It may not be appropriate where the risk to the victim is so great that any approach to an outside agency puts them in danger'* CAFCASS

Three respondents commented that given the potential risks that may arise, the role of relevant third party should not be confined to court action alone but should include setting up a multi-agency risk assessment conference (MARAC).

Two other respondents felt that where the victim had not been shown to give consent and there were potential issues of ensuring their safety, then the relevant third party should be required to obtain leave of court before being allowed to proceed.

Three respondents felt that the circumstances where an application was inappropriate could not be defined and that the court should be the judge of whether a third party application was appropriate or not. Two responses commented that there were no circumstances where it would be inappropriate.

The remaining circumstances, mentioned less frequently, may be summarised as follows:

- Where there are no substantive grounds or cause for concern on face of the case
- Where it is not in best interests of victim
- Where there has been little contact with victim
- Where the relevant third party does not have access to legal advice
- Where the recipient of information is in position of privilege e.g. minister of religion, counsellor
- Where there are clan rivalries and there is just a dispute
- Where there is another more suitable applicant
- Where application is being made just to get round any funding difficulties (i.e. if victim did not qualify for funding)
- Where application is on behalf of child and court has not given consent
- Where there is weak evidence / lack of verification
- Where marriage is arranged and not forced

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**2. Are there any other circumstances when it is appropriate for a third party to make an application on behalf of a child under 16? Are there any circumstances where it is not?**

Of the 55 responses 41 responded to this part of the question. Several responses appeared to assume that the response to question one covered this question, whilst others focussed solely on the role of the local authority and child protection issues. A number of the responses were quite general in content and the circumstances were less well defined than in the answers to question one.

Four respondents said there were no additional circumstances they could identify.

*'The same circumstances will apply regardless of age'* University of Bristol

Seventeen respondents (the largest number) made specific reference to child protection issues. Two main messages were contained in these responses. Firstly, the local authority should act as relevant third party in cases of children under 16 as they need to be linked to child protection/safeguarding processes. Secondly, that if a child under 16 is facing a forced marriage it is automatically a child protection issue and should be dealt with on this basis.



*'It should be the responsibility of the Local Authority to act as third party. In cases where the child is seen to suffer significant harm, the Local Authority will have already intervened using the child protection procedures and in certain cases may need to launch care proceedings'*  
Conwy County Borough Council Children Services

One respondent challenged this view saying that section 47 of the Children Act did not protect a child who was at high risk of forced marriage sufficiently. Two respondents felt that the multi-agency assessment procedures used by child protection agencies should always be used and one commented that the relevant third party processes should be used in addition to child protection procedures and not as a replacement, so that the two were clearly linked.

*'Any guidance on the regulations relating to the role of the third party should make explicit links to the child protection legislation and procedures'* Children's Rights Alliance for England (CRAE)

Ten respondents expressed the view that a relevant third party should be able to make a forced marriage protection application in every case where a child is faced with forced marriage. This was because the safety of the child should be the paramount concern and the child might not understand what was going on or be able to act on their own.

*'There can be no circumstances where if it is known that a minor is subject of a forced marriage that an application should be excluded'*  
CAFCASS CYMRU

*'In the case of children it can be assumed that it will always be very difficult for them to make an application for a FMPO on their own behalf'* Children's Legal Centre

Two respondents felt an order should be sought even if the child was agreeing to the marriage or did not want the court action to go ahead, whilst another thought that the wishes and feelings of the child should be considered as a part of this process.

Two respondents noted that provision already exists in law for another person to make application on behalf of a child, and one other said it should only be used when it represented a better legal option than wardship.

Two respondents asked why the question focussed on children under 16 as they thought the same issues would be pertinent to a young person under the age of majority i.e. 18 years. Two others made similar points saying that in circumstances where any child under 18 was taken abroad to marry an order should be sought.

Two respondents thought an application should be made when parents of a child under 16 are forcing the marriage as they could be construed as failing to protect their child. Another said that a relevant third party should

act when there was a danger that those close to the victim maybe complicit or subject to the same cultural assumptions.

Other individual comments included

- An application should be made by a third party when there is no other suitable applicant
- An application should be made in emergency situations
- An application should be made when the child is reluctant to make their own application
- There is a wide set of circumstances under which it is appropriate for a third party to make an application on behalf of a child
- The threshold of suspicion should be lower for child than for an adult

Are there any circumstances when it is not appropriate to make application on behalf of a child?

There were a small number of responses to this part of the question with no direct answer provided by 44 respondents. This may have been due to the number of respondents who answered the first part of this question by saying that where forced marriage involved a minor it was always appropriate to take action of some kind, which meant that they had difficulty in identifying any circumstances when it was not appropriate to act.

Two respondents thought it might be inappropriate if the child could be safeguarded by other means and two others said that an application should not be made if a parent or a person with parental responsibility wanted to apply.

Three said while it would be important to try to ascertain the child's wishes and feelings the matter of consent was not an issue in the same way as it would be for an adult application. Two respondents felt very differently stating that any issues of consent or capacity in relation to a child should always be explored via a leave hearing and if this was not done, the application would be inappropriate.

*'There should not be any provision in law by which a third party can make an application on behalf of a child under 16 without the permission of the court. If a third party is allowed to make application without gaining permission of the court there is a danger there an abuse of power and trust'* Newham Asian Womens Project

It was also pointed out by one respondent that there should be no automatic assumption that a child under 16 requires a relevant third party to act for them so it would be inappropriate for a third party to act if the child was capable of doing so for themselves. Another respondent made a similar point saying that the Gillick competency test should be used in all cases.

**3. Which type of person or organisation do you think should act as a relevant third party? Please give reasons to support your answer.**

In light of the way respondents answered questions 3 and 4 the following summary of responses generally covers the answers given to both questions. This is because many respondents did not clearly differentiate their answers according to the age of the person on whose behalf action would be taken. Many gave a general response for all age groups in question 3 and gave no response or stated 'as above' for question 4. Some gave further details regarding children under 16 years of age. Some specific points relating to children have been included under the response to question 4.

It should also be noted that the responses were often in the form of arguments and discussion rather than simple lists of types of individual and organisation. There were often caveats given for the suggestions made. Therefore it is only possible to provide an overview of the responses given.

Most respondents commented on questions 3 and 4 either with specific examples or more generally. Some respondents limited their comments to children where their expertise lay in this area. One respondent provided a nil response.

A quarter of respondents made general observations about the types of persons and organisations who should act as a relevant third party. Some respondents questioned the merits of having a specified list of relevant third parties as such a list could inadvertently prevent some victims from accessing the help they sought:

*“The problem with having an approved checklist of organisations is that it may exclude those victims who for a number of valid reasons, including cultural or linguistic difficulties or mistrust of officials, have no or very limited access to the more obvious voluntary or statutory organisations or persons who could make the application on their behalf. For example, a British victim living in isolation in the UK may not have anyone but a friend or relative trying to act to protect her. If the courts only accept those third parties who are on the ...list of ‘relevant’ organisations, it may lead to some victims being left unprotected because of their specific circumstances.” Southall Black Sisters*

However, in contrast others saw disadvantages of having too broad a list of relevant third parties, which may lead to some not being properly equipped, resourced or trained to act appropriately.

Main types of organisations mentioned

To help the interpretation of the results, certain types of people and organisations have been grouped together. The number of times members of these groups were specifically suggested as a relevant third party is given in Table 1. Some of these groups have a more distinct identity than others. For example, the police and social services departments were relatively simple to place, while placing youth offending teams, which bring together a variety of professionals, was less straightforward.

It should be noted that the categories of respondents listed below differs from categories used in other sections of the response. This is because these have been broken down into sub categories.

*Table 1 - Main types of RTPs and number of times mentioned*

<b>Broad type of body/individual</b>	<b>Frequency suggested as adult relevant third party</b>	<b>Frequency mentioned for children relevant third party</b>
<b>Social services</b> (including adult and children’s services, local authorities, education welfare officers)	36	Children’s services specifically mentioned 18 times, 16 of these new mentions under Question 4
<b>Support organisations</b> (including a wide variety of voluntary & statutory agencies with expertise in forced marriage and domestic violence)	30	
<b>Police</b>	15	
<b>Home Office, FCO / Forced Marriage Unit</b>	11	
<b>Schools</b> (including schools, teachers, school governors)	4	6 extra mentions under Question 4
<b>GPs and other health care workers</b>	3	

A huge range of charities and women’s organisations was suggested, some providing more specialist support services than others. A broad spread of responses was obtained with most named groups mentioned only once or twice. Southall Black Sisters was the named voluntary support group cited most frequently (5 times).

Other types of organisation/individuals that have not been placed in the main groupings of Table 1 were CAFCASS (mentioned 5 times), Victim Support (mentioned twice), Mosques, churches, clergy (mentioned twice), and Border and Immigration Authority/ Immigration officers (mentioned twice). There were individual mentions for other types of organisations.

Respondents’ own interest in acting as a relevant third party

For each of the main groups in Table 1 a note was made of how often these organisations suggested themselves as a relevant third party

*Table 2 - Respondents’ thoughts on own type of body acting as a relevant third party*

<b>Broad type of body/individual</b>	<b>Suggestion of own type of body acting as RTP</b>
<b>Social services</b> (including adult and children’s services, local authorities, education welfare officers)	10 responses – all Yes
<b>Support organisations</b> (including a wide variety of voluntary and statutory agencies with expertise in forced marriage and domestic violence)	8 responses – 3 Yes, 5 No
<b>Schools</b> (including schools, teachers, school governors)	No responses
<b>Police</b>	1 response – No
<b>GPs and other health care workers</b>	1 response – No
<b>Home Office, FCO / Forced Marriage Unit</b>	1 response (Forced Marriage Unit) – No

Table 2 illustrates that a number of organisations did not consider themselves as suitable relevant third parties despite being suggested by a number of other respondents. Responses from social services departments were the exception to this.

Respondents mentioned local authorities most often as the most appropriate organisation to be a relevant third party for both children and adults given their existing duties, skills and resources.

*‘Given their wider statutory duties, a local authority will be better placed to initiate proceedings in circumstances where the ‘victim’ may not feel able to bring proceedings or to (at the outset) support such proceedings, or may be unable (by reason of lack of capacity) to bring proceedings.’* Official Solicitor

For adults, the second most mentioned group were voluntary or support organisations. Many saw voluntary groups as having the trust of the victim and understanding the dynamics of forced marriage.

The third most often cited group was the police, usually based upon their statutory obligation to protect victims. It was also noted that their protective role was conducive to the wider forced marriage protection application process and one respondent noted that families of forced marriage victims would be fearful of making threats against the police.

The Forced Marriage Unit was also frequently included in responses. It was seen as an organisation that had the professional experience of dealing with forced marriage cases and had a bank of knowledge on forced marriage, as it was the main organisation to which victims were referred. Furthermore, it had experience of dealing with the international nature of forced marriage in light of some victims being forced into marriage overseas.

*‘The Forced Marriage Unit, as a joint Home Office and Foreign and Commonwealth Office body, is well-placed to intervene in forced marriage cases involving victims at threat of being sent abroad’.*  
Odysseus Trust

An overview of the reasons given by respondents for suggesting, or warning against, the use of different individuals or organisations as relevant third parties is provided below.

### Accessibility

A number of reasons given for why a person or body should act as a relevant third party related to their relationship and accessibility to the victim. Specialist support organisations were seen by some as being approachable within a community, in touch with vulnerable people and able to gain their trust. Other people and organisations suggested for

similar reasons included teachers, youth workers and health professionals. A range of organisations were suggested because they may be contacted by victims or aware of people at risk, including schools, social services, the police and the Forced Marriage Unit.

Limited accessibility of different organisations was suggested by some as a reason for not having too small a list of organisations. Lack of geographical spread of certain organisations could mean that those in need were not able to access the help they needed. Indeed this was a reason given by the Forced Marriage Unit as to why they should not be considered as a possible relevant third party. Some respondents suggested large numbers of organisations, perhaps considering accessibility as a key factor. Some noted the proximity of local authorities to the communities of potential forced marriage victims.

*'They are also close to the victims and are often the first or primary contact for a victim in a potential forced marriage case, allowing them the opportunity to build trust with the victim and to act with a proper understanding of the case.'* Forced Marriage Unit

### Skills and experience

The importance of skills and experience in acting as a relevant third party was highlighted by a large number of respondents. The types of skills and experience mentioned included: experience of the courts, legal expertise, and experience of helping those who had suffered domestic violence and forced marriage. A number of specialist support groups were suggested for these reasons.

Local authorities were also considered by many to have this expertise. They already had a duty to safeguard and promote the welfare of children within their area and to investigate allegations of children suffering, or at risk of suffering harm. They were also seen as an agency that already had policies and processes in place to protect vulnerable adults and children and to investigate cases of abuse. Furthermore, they adopted a multi-agency approach to their work, covering issues such as housing, counselling and physical and mental health when dealing with cases.

However, the limits of such expertise were also highlighted as a reason to be careful in assigning potential relevant third parties. The highly complex nature of individual cases and the very specific cultural factors at work in any given situation gave some respondents concern as to who would have sufficient understanding in practice. The need to avoid making situations worse in potentially life or death situations was raised. Such concerns related to all possible relevant third parties.

### Resources

The resources needed to act as a relevant third party were an issue for many. Some questioned who would have sufficient time, budget and capacity. Suggestions for local authorities to take on the role were often

supported by the argument that they had the resources to do so. A number of voluntary organisations did not feel they had sufficient resources to take on this role. Another aspect to the resource issue was the need to be able to support victims through the entire process, which may include access to a place of safety and help in developing a new life after any legal action.

Local authorities were also seen as agencies that already had resources in place to deal with cases of forced marriage. They were more likely to have knowledge about local and regional issues impacting on vulnerable groups and they had expertise in family law and established links with local voluntary sector organisations. The question of resources is considered further in response to question 5.

#### Role conflict

There were concerns by some that the demands of being a relevant third party would be considered too onerous and outside a person or organisation's role. Conflict with other aspects of an individual's work might occur, for example when a teacher needs to maintain relationships with other members of a victim's community. One respondent gave details of a case where a GP had appeared to act against a victim's own interest due to loyalties to the wider community.

The potential for misuse of the Act against individuals was raised as an issue and a reason for not giving relevant third party status to individuals and certain voluntary organisations.

#### Physical safety

The physical safety of those who acted in the capacity of a relevant third party was an important issue for some respondents. Concern was voiced in relation to both individuals and voluntary organisations. The need to keep the whereabouts of some victims in refuges confidential was a reason given for not asking refuges to act as relevant third parties.

#### Statutory obligations

As seen in Table 1, a large number of respondents felt that responsibility for acting as a relevant third party should lie with local authorities. They were seen as having the statutory obligation to support individuals at risk.

Some respondents suggested that multi-agency working was likely to be important for the success of the Act. The local authority could act as the relevant third party, but work with other agencies to support the individual. Likewise a large number of organisations might become aware of cases where forced marriage was suspected and pass these on to the relevant local authority.

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**4. Which type of person or organisation do you think should act as a relevant third party for children under 16? Please give reasons to support your answer.**

From the summary above it can be seen that a clear majority of respondents saw local authorities as appropriate to act as a relevant third party for children. Many cited the local authorities' existing statutory and regulatory responsibilities towards children and vulnerable adults and that they were strongly positioned to monitor cases of forced marriage.

*'The statutory procedures are a child's best protection; they are well established and can be implemented swiftly. Any other arrangements whereby other third parties become involved would simply result in confusion and delays in protecting the child.'* Children's Commissioner for Wales

Other respondents noted that local authorities had the capacity to support victims of forced marriages in a number of ways especially through their links to other services and organisations. Local authorities were seen to have the necessary resources and legal services for the role of relevant third party for children. Additionally, local authorities were often the first to be informed when a child was at risk of forced marriage and therefore they were the most appropriate body to make forced marriage protection applications. Some saw the need to deal with the forced marriage of those aged under 16 via child protection procedures.

*'I think it would be very dangerous to deal with the forced marriage of an underage girl as if it is not a form of child abuse – it minimises the wrong.'* Cardiff University

The relationship between the Forced Marriage Act and child protection procedures was frequently highlighted. A number of respondents considered forced marriage of children below 16 to be a child protection issue where the use of other legislation was more appropriate. Many thought child protection procedures would be applicable for all those up to the age of 18.

A small number of respondents saw a role to play for CAF/CASS as appropriate relevant third parties for children as they already had experience in working within the legal system, understood the rights of the child and were used to taking the child's side in a courtroom setting. Four respondents suggested that the NSPCC was an appropriate organisation to act as a relevant third party for children. It was noted that NSPCC already worked with schools and young people, and had specialist workers to engage with schools and to provide the necessary support for professionals and children and young people.

As seen from Table 1 above a small number of respondents saw schools, local education authorities, school governors and teachers as appropriate to act as a relevant third party for children. They were seen as having a

close relationship to potential victims and would have their trust. However, some saw that a wide range of relevant third parties could prove detrimental.

*‘Awarding too many organisations third party status may mean that organisations that are not properly equipped are asked to carry out this role. Allowing too many organisations to have this status may also be out of proportion to the relatively small numbers involved. Third parties will also require ongoing guidance, support, training and funding, this will need to be properly resourced.’* Children’s Rights Alliance for England (CRAE)

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**5. Based upon your answers to questions 3 & 4, what type of funding or resources would a relevant third party need?**

Of the 55 responses, 48 specifically responded to this question. A summary of the main themes emerging from this question is provided below. However, as there was much overlap between this question and the answers given to questions 3 and 4, some information is found in the summary above (see page 16 onwards).

There was little distinction made between the differing types of funding and many responses were not clear whether the resources identified as required were for the benefit of the relevant third party or the victim. However, most respondents commented on the need for direct funding or support in terms of training or guidance.

Twelve respondents noted that if relevant third party intervention was to be effective, it was essential that relevant third parties had access to free legal advice and guidance. Many respondents cited that it would be not be reasonable to expect a charity or non-governmental organisation to meet the costs of applying for an order on behalf of a victim. Others noted that charities did not have the financial resources to cover the legal costs of either themselves or the victims who turn to their organisations.

*‘It is essential that funding and resources are made available fully to reimburse relevant third party organisations who apply for injunctions on behalf of young people who are at risk of being forced into marriage. The Government should create a fund for third parties to recover the costs of the injunction application. Ensuring that relevant third party organisations’ costs are covered will mean they are not deterred from carrying out assessments and applying for injunctions due to their financial impact’.* NSPCC

Others noted that the level of funding had to be realistic and take account of the legal and factual complexities of many forced marriage cases. They

highlighted that forced marriage cases often required a number of successive hearings within a short space of time.

Similarly, a quarter of respondents stated that it was necessary for the relevant third party to have training in the new legislation in order to obtain a working knowledge of the Act.

A large number of respondents also noted that training was essential to ensure that forced marriage protection orders were completed correctly:

*“Those acting as third parties must have a clear understanding of what forced marriage is, and the likely impact of intervention in suspected cases of forced marriage, particularly in terms of the safety of victims. Without this knowledge, third parties may bring forward cases that are arranged rather than forced marriages. They might also endanger victims of forced marriages by applying for an injunction where this is not the most appropriate course of action”* Fawcett Society

Several respondents felt that it was important for government to introduce structured national training programmes for agencies and individuals who were required to act as a relevant third party. Building up capacity in relevant third parties could occur through an accreditation process.

Five respondents noted that funding had to be provided for relevant third parties to meet the costs of providing safe housing for adult victims of forced marriages. A number of these respondents noted that emergency housing was essential if victims were to be protected since victims would be fearful of staying with their spouses. Funding was also important for the provision of more refuges to enable victims to access a safe place to stay.

*‘In particular for adult victims there needs to be sufficient resources within the local authority to provide an immediate package of support (e.g. housing) for victims. This may need to be accessible long term.’*  
CAFCASS

The need for access to legal expertise in order to conduct the proceedings and comply with the requirements of the legal process was mentioned. Therefore it was important for organisations to obtain the necessary funding to cover the cost of legal services when dealing with forced marriage protection order applications.

*“For third party interventions to be effective, victims and third parties themselves will need to have access to free and confidential legal advice. It is therefore important to ensure that specialist legal aid firms, advice centres and voluntary organisations are properly funded so that they can if required, given sound advice and information.”* Southall Black Sisters

**6. What safeguards should there be for a victim to ensure that the relevant third party acts in their best interests?**

Of the 55 respondents, 44 answered this question. Respondents identified a very wide range of safeguards in their answers. Most came up with more than one suggestion so that the number of safeguards reported in this section is larger than might be expected.

Sixteen respondents made direct reference to the role of the court in safeguarding a victim's interests, and this formed the biggest area of consensus between the respondents.

*'The best safeguard is tight judicial control'* Association of District Judges

Nine of these respondents felt that there should be an initial scrutiny or "leave" process which the courts should adopt before proceeding with a full application, although the Act itself does not require the relevant third party to apply for leave.

Other respondents suggested specific safeguards in relation to the courts. Examples included

- the power of the courts to control and direct the relevant third party once the process was in place
- the courts' power to use their inherent jurisdiction to reject frivolous or vexatious applications
- the courts' ability to check and verify applicants consent
- the courts' powers to question why the victim could not appear in person
- where the victim is abroad the court should only allow relevant third party to bring an action equivalent to habeas corpus (to bring forward someone from unlawful detention)
- victim should be asked to attend court

Two respondents felt that courts could provide an important safeguard for victims by dealing with applications in a timely and prompt manner as any delay could be detrimental.

The majority of other safeguards that were mentioned fell into three broad categories. The issue of whether a victim had consented was seen to be essential to safeguarding their best interests, although many respondents who discussed this area recognised that consent may not always be possible. Some suggested safeguards that could be put in place where consent had not been obtained. Eight respondents believed that the best safeguard is to get victim's consent, ideally in writing.

*'The third party should, wherever possible obtain consent from the victim to act as a third party on their behalf'* Northumbria Police

Other comments in this area included the need to obtain the views of the victim, that the victim should be able to vary an application/withdraw from case if brought inappropriately or without consent and that where consent not obtained a multi-agency risk assessment conference (MARAC) type process should be adopted. It was also suggested that where the victim lacks capacity, Independent Mental Capacity Advisers should be involved.

The competency and professionalism of the relevant third party together with adequate resources to support their work was also seen as a key safeguard against poor practice and potential exploitation of the victim. The most frequently suggested issues were the need for careful selection of relevant third parties using only trained, appropriately funded and accredited organisations and the need for training on cultural awareness and sensitivity for the relevant third party.

Moreover, relevant third parties needed good lines of accountability and senior management oversight of decisions and should be bound by a “duty of care” or an obligation to act in good faith. A verification process might also be adopted. Adequate facilities and funding were also seen as a necessary safeguard and the issue of respecting confidentiality was raised.

Less frequent comments included the need for a regular review of the case, clear and ongoing communications should be maintained with the victim and a record of conversations and actions should be kept.

The final area of comment was the need for a robust legal, practice and procedural framework to support the application process. Safeguards for the victim included legal representation, the provision of high quality casework and advice and access for the victim to court information and data held. The need for professional advocates was raised, particularly where a victim has a disability.

Less frequently suggested safeguards included the need for training for judges and legal personnel as well as the need for defined thresholds to be reached before action was taken. There was a need for guidance on the role to be given and subject to periodic review. Full documentation should be obtained and maintained. For children a welfare report should be required in the majority of cases. There should be a complaints process for victims to use in respect of a relevant third party and close monitoring of the victim after an order was made.

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**7. Are there any other safeguards required for a relevant third party acting on behalf of children aged under 16?**

Of the 55 respondents 47 responded to this question.

Three respondents said the safeguards should be the same as for adults and that they had nothing to add, but the remainder suggested a range of safeguards. Nearly half of these focussed on using local authorities and child protection procedures and/or involving CAFCASS/children's guardians.

Seven respondents suggested using the child protection processes and a further four mentioned referral to social services or the local authority. Seven respondents identified the involvement of CAFCASS as key, and another five said there should be a children's guardian appointed. Two others wrote about the effectiveness of using multi-agency risk assessment processes and two suggested independent advocacy services as an addition to these services.

*'(Our) view is that applications in this situation should only be brought by statutory social services. A further safeguard would be the instruction of a guardian to represent a minor in proceedings – from the panel of guardians instructed in care proceedings' Resolution*

The second category of responses looked at ways of working with the child which would help safeguard the process. Four respondents said it was important to keep a child's wishes and feelings central to the process and two commented that there must be awareness of the balance of power when talking to the child.

As with question 6, the competence and experience of the relevant third party organisation was seen as an important factor. Four mentioned that the person working with the child (including foster carers), must have relevant qualifications and experience of working with children.

*'The third party making the application can show that if they work within an organisation that they have the relevant qualifications and knowledge of supporting children through domestic abuse and forced marriage' Welsh Women's Aid*

Three said that full criminal records bureau checks/stringent vetting were important. Two felt that knowledge and understanding of the Gillick competency test were essential and one respondent thought that there should be clarity about who was acting as the "lead professional" for any child victim.

There were differing views about the issue of consent of the child victim. Two respondents said that consent was not a prerequisite to taking action but that the wishes and feelings of the child should be recorded. One thought action should not be taken unless the child gave consent. Two others commented that there should be a careful evaluation of the circumstances before taking any action and that the child should not be placed at higher risk by pursuing an application. The issue of obtaining leave to apply was also raised - three respondents said this was an essential part of the process in applications involving children (as with

adults). One respondent mentioned that parents/guardians should be given the right to ensure that the victim gets justice.

Two respondents felt that there should be an awareness that the child's siblings or other members of the family may need help in cases of forced marriage and that there should be a package of measures, including financial support and accommodation available for the child and any others who needed it, if cases were to be brought to a successful conclusion. Similarly two respondents saw the need for access to high quality legal advice and expertise as essential.

*'..the child's family and siblings may need safeguarding or protection if intervention occurs'. National Youth Advocacy Service (NYAS)*

Three respondents focussed on the role of schools and commented that there should be special arrangements in place to monitor situations where children are withdrawn prematurely.

Other safeguards that were mentioned included the need for any organisation involved to have a safe and comfortable space to meet the child; the need to use independent witnesses wherever possible and the need to make any application in the name of the individual concerned.

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## **8. How can we adapt our court administration to meet the needs of those who use the Act?**

Of the 55 responses, 43 responded to this question. A number of key themes emerged and these are provided below.

### Availability of interpreters

Around half of the responses commented on the need for easy access to language interpreters to be made available for those with language difficulties. A number of those responding added that interpreters should be independent and should not be part of the victim's community network to ensure the safety of the victim and to prevent intimidation. The independence of the interpreter was also seen as essential to ensure an accurate reflection of the victim's views. There was recognition of the need for interpreters to understand and accept the importance of maintaining confidentiality.

*'Interpreters should be easily accessible and available as needed. As already stated, the choice of the interpreter is vital. The chosen interpreter must be trained and must not hold views which encourage or promote the idea of forced marriage. They should not be part of the community network of the individual for their own, and the individual's safety, or they could be in receipt of threats or violence to themselves or to their family'. CAPE (Child Protection in Education)*

A few respondents asked for consideration of victims who are deaf and use their own country native sign language that is not British Sign Language, given the increase in deaf asylum seekers in recent years.

### Security measures

Eighteen respondents supported the use of security measures or the use of video link evidence. Reasons given were that victims could be subject to intense pressure to stop proceedings, which might be considered as shameful or bringing dishonour on their family and community. Family may attend court to exert physical or emotional pressure to prevent the victim from taking legal action.

*'Safety of the victim should be paramount within proceedings. Video conferencing or the use of a screen to protect the victim and others including a third party who may be a member of the family, a friend or a member of the community may be necessary in some cases.'*  
CAFCASS CYMRU

A Practice Direction made by the President of the Family Division setting out what special measures are available to assist vulnerable witnesses in giving evidence was mentioned. A few respondents supported the view that special measures and intermediaries should be available automatically to victims and third parties who believe their safety to be in danger or that they will be intimidated if they give evidence in court.

### Training for court staff and judges

Sixteen responses commented on the need for training of court staff and the judiciary. Some commented on the need for court staff to be fully trained to understand the purpose of the Act and the forced marriage protection order application process. Others saw a need for the training to include the effects of forced marriage on victims and an awareness of multi-cultural issues that arise.

*'...the court should build cultural competence within its administration i.e. develop the ability to deal with different cultural perceptions...'*  
Ethnic Minority Foundation

Six responses felt that court staff, when listing applications, should give priority to applications under the Act and that training should support this approach. Four respondents saw the need for a speedy response to be provided by staff and the court when an application was made.

### Court forms, leaflets, documentation

Thirteen respondents saw the need for information on forced marriage to be available in different languages and reflect the languages spoken in the community. Twelve responses highlighted the need for the application process, including the forms associated with this, to be clear and simple and all documentation should be written in plain English. There was also



comment on the need for minimal paperwork in relation to the application process and that courts should put measures in place to ensure that illiterate persons understand court proceedings.

#### Court facilities

Around a quarter of those who commented saw a need for separate waiting areas for victims that are secluded from the public and the respondents. The safety of the victim should be seen as paramount and should be considered for both entering and leaving the courthouse (i.e. separate entrances and exits for victims).

Respondents felt that it was important that the victim and other relevant individuals were kept apart, and protected, from other family members. The use of witness care rooms was raised as a method of preventing the victim encountering members of the family. One respondent saw the need for the option for hearings to be held in other towns away from the family town to minimise the risk to the victim and another that court buildings should be made less intimidating.

*‘Separate waiting rooms which are monitored by security should be provided for each victim on arrival to court.’* Hackney Council Domestic Violence and Hate Crime Team

#### Public information about the Act

A small number of responses commented on the need for information on the Act to be made widely available. Some suggestions as to where information could be displayed or made available included mosques, schools, colleges, universities, GP surgeries, and hospitals. There was also suggestion of providing an information pack containing all the civil and criminal options for victims of forced marriage

*‘Court information, leaflets and guidance to be sent to mosques and schools that victims may have contact with and where they feel less intimidated in accessing the information.’* Ahmadiyya Muslim Association UK

There was also comment on the need for police and other public sector organisations to know their duty in this area.

#### Confidentiality

A few respondents indicated that the victim’s whereabouts should be kept confidential and all references to the victim’s address should be removed from court documents. A few respondents saw the need for court staff to understand the need for confidentiality in relation to protecting victims of forced marriages, given the persistent way in which families had been known to track down victims.

### Provision of same-sex court staff or judiciary

A small number of respondents commented on the need to make available same-sex court staff (including judges in some cases). An example given was that female Muslim witnesses do not wish to give evidence to a male judge. In such circumstances alternative options, such as video link evidence, might be appropriate.

### Court provisions for disabled victims

A small number of respondents highlighted the need for adequate pre-hearing support, which addresses in particular vulnerable victims and those with learning disabilities. Also, that court information should be accessible and adapted to the needs of persons with physical and mental disabilities. One respondent commented that intermediaries were vitally important if courts were to have regard to a person's wishes and feelings. Intermediaries could be used to assist courts communicating with victims and in understanding victims' replies. This was particularly important where the victim had learning disabilities.

*'We would be gravely concerned if a court simply decided that a victim did not understand and so did not consider their wishes and feelings. Unfortunately we fear this may happen in some cases involving people with learning disabilities. It is common for professionals to assume that people with learning disabilities are incapable of communicating their wishes and feelings and / or can not understand what is going on.'*

Respond / Ann Craft Trust / Voice UK

### Court provisions for children

A few respondents commented on the need for a flexible approach to taking evidence where victims are under 16 years. Information provided to children should be in an age-appropriate format and comment was made on the need to support children who make applications and in particular when they give evidence.

### Court fees

Ten respondents commented on court fees. Some expressed the view that there should be no requirement for court fees to be paid for an application for a forced marriage protection order. This included applications by relevant third parties. Some believed that court fees present a problem to some victims as in many cases family members assume control of the victim's finances. Some saw that payment of a fee would deter relevant third parties who have insufficient resources.

Others believed that fees should be modest and kept to a minimum. There was comment that victims should not have to pay upfront fees but that the money might be claimed back from the applicant after a Forced Marriage Protection Order has been made. The respondent might be ordered by the court to pay full costs when appropriate.

### Independent Domestic Violence Advisors

A few respondents commented on the need for advocacy services to support the victim. There was support for expanding the role of the Independent Domestic Violence Advisors (IDVAs) to include supporting women and children through the civil law process and using the Specialist Domestic Violence Courts as a model.

### Other comments

Some comments that appeared with less frequency were:

- Magistrates' court should be able to make forced marriage protection orders as they provide easy access because there are so many of them
- Limiting the number of courts will not help to meet the needs of those using the court as this will involve travel and costs for victims and parties alike and may deter third parties from making applications and attending court
- The court should include at least one lay member with knowledge and experience in the cultural sensitivities and faith dimensions of forced marriage
- Continuity of judge unless absolutely unobtainable
- It should be considered that on occasions the wider family could be anxious to protect a child in this situation
- Development over time of a panel of experienced solicitors local to each court

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## **9. Comments on the impact assessment**

Four respondents made specific reference to the impact assessment. One respondent agreed with the benefits that a relevant third party could provide were outlined in the evidence base. Another respondent agreed with the estimation that as few as five cases a year might come before the courts as the vast majority of victims just want to escape the abusive situation they are in.

One respondent agreed with the inclusion in the impact assessment of the need for additional funding and resources for training the relevant third party in the new legislation.

*'As identified in the impact assessment, relevant third parties would need additional funding / resources for training staff in the new legalisation and to cover the time spent on casework and advocacy.'*  
Refuge

One respondent noted that it was hard to produce an accurate picture of forced marriage cases based on statistics from the Forced Marriage Unit,

as the problem of forced marriage was under-reported with many victims not seeking assistance from the government or the voluntary sector.

In terms of cost, one respondent was not clear how the cost of £2,800 per case of forced marriage had been reached in the impact assessment as there had been no reference to factors such as accommodation for victims, financial support where victims had no recourse to public funds or the increased legal costs if the respondent contests the application. It was also noted that the financial implications for statutory relevant third parties would not be as detrimental as they were for other organisations, such as those in the voluntary sector. This was because such organisations had their own legal departments and in-house lawyers and were familiar with making applications to the courts.

*'For non-statutory organisations, particularly women's and BMER women's organisations, who are already overstretched and facing a funding crisis, the costs involved are likely to be prohibitive. There is no point in giving non-statutory organisations the ability to act as third parties if they are not given the resources to exercise this in support of vulnerable women and girls.'* Rights of Women

It was suggested that the funding needed to enable non-statutory relevant third parties to make applications could be achieved through either ring-fenced funding or changes to the current public funding rules to enable organisations to receive funding for such applications.

For victims of forced marriage with learning disabilities, one response noted that many victims with learning disabilities did not have the capacity to understand their predicament or to do anything about it. Therefore, forced marriages among persons with learning disabilities stood a higher chance of being under-reported. Furthermore, where forced marriages were reported, persons with learning difficulties would need specialist assistance with application and hearing processes:

*'Victims of forced marriages with learning disabilities will require assistance if they are to apply for a Forced Marriage Protection Order. It is quite possible that some people with learning disabilities will be unable to apply for such an order themselves even with assistance. Victims with learning disabilities will certainly need help during the court process to understand what is going on and to communicate their wishes and feelings to the court.'* Respond / Ann Craft Trust / Voice UK

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## Conclusion and next steps

1. We are very grateful to everyone who responded to this consultation. We are pleased that responses were received from a wide range of public, private and voluntary sector organisations and that these organisations support adults, vulnerable persons and children. This reassures us that the key messages expressed were valid and reliable.
2. The key theme emerging for children was the need for a relevant third party to act as part of, or consistent with, existing child protection policies. The majority of respondents who commented on children named local authorities as suitable given their existing responsibilities in relation to child protection.
3. Whilst there was support for the voluntary sector acting as a relevant third party for adults, respondents generally favoured local authorities. They were preferred because of their existing statutory obligations, lines of accountability, legal resources and knowledge. However, respondents clearly saw a role for the voluntary sector given the close relationship they often have with the victim.
4. Consequently, after careful consideration of all the responses, we have decided that local authorities will act as relevant third parties for both adults and children. This will come into effect once the necessary safeguards as identified by respondents have been put in place.
5. However, we recognise that the role that the voluntary sector plays is an important one and should be explored further. The success of the Independent Domestic Violence Advisers (IDVA) has shown how the voluntary sector can play a strong support role in helping those who are the subject of domestic violence in the criminal courts. Whilst IDVAs are currently limited to the criminal courts, they have expertise in dealing with issues like forced marriage, are experienced multi-agency workers and work under an accredited scheme.
6. Therefore, we will also look for a pilot using a local IDVA scheme as a relevant third party. If this proves successful, in the longer term, we would look at extending the relevant third party more widely across IDVAs as well as other voluntary sector organisations. Government currently contributes to the funding of local IDVA schemes and funding will also be made available for the pilot scheme. After an evaluation and in light of the usage of the Act, we will then consider what further steps should be taken.

7. The responses to consultation showed that there is work to be done before the Lord Chancellor can make an order specifying any relevant third parties. We need to meet respondents' concerns that safeguards will be in place for victims.
8. Our next step is to develop a framework outlining how and when relevant third parties should act. Relevant third parties need appropriate knowledge and guidance, especially in relation to acting in the best interests of the victim, and awareness of the dynamics behind forced marriage.
9. We also want to look at how a multi-agency approach could be used to support the victim and we are keen that local authorities actively seek advice and work with voluntary organisations where possible. Through the appointment of Local Authorities as relevant third parties we can ensure that tackling forced marriage is brought into mainstream policies and we hope that local authorities will actively work to raise awareness with local voluntary organisations. The role needs to link into the existing regulatory framework for local authorities and this will include a monitoring and evaluation process. For children, it will be important that the role becomes part of or is consistent with existing child protection measures and policies.
10. We initially assumed a low volume of cases under the Act namely 5 – 50 cases per annum. We also assumed that a few as 2 new cases would arise because of the availability of a relevant third party and that 3 cases would be brought by the relevant third party that would otherwise have been brought by the victim in person.
11. The updated impact assessment in Annex B demonstrates that based upon these assumptions the costs of using local authorities as the relevant third party are very small. Costs of individual cases that would be significant for a voluntary organisation are not significant for a local authority with their existing infrastructure. Clearly in some cases victims will not need a relevant third party to make the application for them, but will act themselves or with a legal representative. This will reduce the numbers of cases where an application by a relevant third party is needed.
12. Becoming a relevant third party does not impose a duty on local authorities but provides them with another type of court order they might obtain in appropriate circumstances. Local authorities also have existing statutory duties and obligations together with legal expertise and knowledge of court proceedings.
13. Working together across government and local government it will take an estimated 9 -12 months to ensure that local authorities have the guidance and information they need to ensure that they can act appropriately as a relevant third party. It is hoped that the pilot scheme for IDVA's can be

developed within a similar timeframe. In the meantime, we will monitor the use of the Act in court and use the information to shape and develop this work. We intend to carry out a formal evaluation after a year of the provisions of the relevant third party coming into force.

14. It is important to recognise that the Act makes separate provision for anyone to apply on behalf of a victim with the permission of the court. We believe that the appointment of local authorities as relevant third parties will strengthen and support victims, but this should not deter anyone from making an application on behalf of the victim with the court's permission in appropriate circumstances.
15. The responses on how we might adapt our court administration to meet the needs of those who use the courts were very welcome. They informed much of the work we have undertaken with the courts, staff training and the provision of information during the implementation programme.
16. Her Majesty's Courts Service (HMCS) is providing training on the Forced Marriage Act to family county court staff in the first court locations to deal with the Act. This training includes setting forced marriage in context, identifying why confidentiality is paramount, and the likely need to consider further security arrangements given the vulnerability of victims. Along with the Forced Marriage Unit we have made presentations on the Act and forced marriage to staff and judiciary in each of our seven court regions, raising awareness of forced marriage.
17. The Judicial Studies Board is providing a training guide for members of the judiciary and the Forced Marriage Unit has been invited to judicial training events to talk about forced marriage and the context behind it.
18. The Family Proceedings Rules Committee (The Committee), who decided on the rules and forms for the Act, recognised the need to highlight to applicants the availability of security measures and included this as a question in the application form. The Committee also included a rule that allows the court to direct the withholding of submissions or evidence from the record of the hearing in order to protect the person who is the subject of the proceedings, any other person or for any other good reason.
19. A short leaflet for the public explaining the main provisions of the Act will be available and translated into the five main languages that the Forced Marriage Unit have identified as most commonly used in the cases they deal with. This will be printed but also available on the HMCS website. HMCS will also provide a step by step guide for those wishing to make an application available on their website.

20. Because of the sensitivity of these cases, HMCS will provide an interpreter if required. This is irrespective of whether solicitors are involved or public funding is available. An interpreter will generally be available for the applicant, respondent(s), and the victim where they are not an applicant, but giving evidence as a witness.
21. Legal aid will be available for individual applicants and respondents under the same funding criteria as in domestic violence cases e.g. cases where a person is seeking protection from harm. The Legal Services Commission will therefore not be making any changes to the Funding Code.
22. We are very aware that this is the start of the process and there is more work to be done. We want to work with stakeholders to consider how to make our information more available to children and those with learning disabilities. We are also considering with the President of the Family Division the making of a Practice Direction highlighting out what measures are available to assist victims of forced marriage giving evidence.
23. Once the Act comes into force we will monitor how it is used in the courts. It is only when the courts start to make forced marriage protection orders that future developments can be accurately informed. We welcome details of how the Act is working in practice. In particular, examples of what is working well and what aspects need to be looked at again. Please use the contact details included in this consultation to provide feedback on the experience you gain through making applications or supporting others to make an application under the Act.



## **Consultation Co-ordinator contact details**

If you have any complaints or comments about the **consultation process** rather than about the topic covered by this paper, you should contact Gabrielle Kann, Ministry of Justice Consultation Co-ordinator, on 020 7210 1326, or email her at [consultation@justice.gsi.gov.uk](mailto:consultation@justice.gsi.gov.uk).

Alternatively, you may wish to write to the address below:

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Ministry of Justice  
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54-60 Victoria Street  
London  
SW1E 6QW**

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given on page 3.

## **The consultation criteria**

The six consultation criteria are as follows:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

**These criteria must be reproduced within all consultation documents.**

## **Annex A – List of respondents**

Affinity

Ahmadiyya Muslim Association UK

Association of District Judges

Association of School and College Leaders

Baroness Park of Monmouth

Ben Hoare Bell Solicitors

British Association of Social Workers

British Sikh Consultative Forum

CAFCASS

CAFCASS CYMRU

CAPE (Child Protection in Education)

Cardiff University

Catholic Bishop's Conference of England & Wales

Children's Commissioner for Wales

Children's Legal Centre

Children's Rights Alliance for England (CRAE)

Children's Services Caerphilly Borough Council

Colwyn Women's Aid

Conwy County Borough Council

Crown Prosecution Service

Durham Local Safeguarding Children Board

Ethnic Minority Foundation

Family Justice Council

Fawcett Society

Forced Marriage Unit

Hackney Council Domestic Violence and Hate Crime Team

IMKAAN

Jenny Willott MP

Leeds City Council Children's Services

London Borough of Tower Hamlets Domestic Violence Team

Lord Hylton

Manchester Metropolitan University

Newcastle City Council

Newham Asian Womens Project

Nick Gulliford

Northumbria Police

NSPCC

NYAS

Odysseus Trust

Official Solicitor

Refuge

Resolution

Respond / Ann Craft Trust / Voice UK (joint response)

Rights of Women

Semaab Shaikh, Barrister

Southall Black Sisters

Sir Mark Potter, President of the Family Division

Swindon Borough Council

Torfaen County Borough Council

The Council of British Pakistanis

The Muslim Council of Britain

Union of Muslim Organisations of UK & Ireland

University of Bristol

Welsh Assembly Government, Children's Health & Social Services

Welsh Women's Aid

## **Annex B – Impact Assessment**

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>Ministry of Justice</b>	<b>Title:</b> <b>Impact Assessment of the implementation of relevant third party provisions of the Forced Marriage (Civil Protection) Act</b>	
<b>Stage:</b> Final Proposal	<b>Version:</b> 1	<b>Date:</b> 13 November 2008
<b>Related Publications:</b> Forced Marriage (Civil Protection) Act 2007 - Relevant Third Party		

### Available to view or download at:

<http://www.opsi.gov.uk/acts/acts2007/20070020.htm>

**Contact for enquiries:** Janice Stevenson

**Telephone:** 020 3334 3105

### What is the problem under consideration? Why is government intervention necessary?

A victim of forced marriage may not be able to personally apply for a court order. The Act provides for relevant third parties to apply on behalf of forced marriage victims. This will put in place help for vulnerable victims who are unable to seek protection of the court themselves.

Government intervention is necessary to provide for an order appointing relevant third parties to make applications on behalf of victims of forced marriage without the courts permission.

### What are the policy objectives and the intended effects?

To ensure that vulnerable victims of forced marriage have access to the protection of the court through a suitable relevant third party. Local authorities acting as relevant third party will provide an additional avenue for victims of forced marriage to gain court protection.

### What policy options have been considered? Please justify any preferred option.

1. Make no provision for a relevant third party
2. Voluntary sector organisation acting as relevant third parties
3. Public sector acting as a relevant third party - preferred option, given this would link with local authorities existing responsibilities for protecting children and vulnerable adults.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? 12 months from the relevant third party provisions taking effect

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:



.....Date: 13 November 2008

## Summary: Analysis & Evidence

<b>Policy Option:</b>	<b>Description:</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	Description and scale of <b>key monetised costs</b> by 'main affected groups'  Assumes support worker needed for 6 weeks per case and legal expert for 4 days. Cost per case has been estimated to be £2,800.  Legal aid and court costs are referred to below
	One-off (Transition) <span style="float: right;">Yrs</span>	
	Average Annual Cost (excluding one-off)	
	<b>£ 0</b>	
	<b>Total Cost (PV)</b>	<b>£</b>
Other <b>key non-monetised costs</b> by 'main affected groups' None identified		

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups' None identified as LA already have existing responsibilities for children and vulnerable adults and this will provide a complementary role
	One-off <span style="float: right;">Yrs</span>	
	Average Annual Benefit (excluding one-off)	
	<b>£</b>	
	<b>Total Benefit (PV)</b>	<b>£</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' Complements existing duties of local authorities to protect children and vulnerable adults		

**Key Assumptions/Sensitivities/Risks:** Low volume of cases anticipated (5-50 per annum) with a small percentage of these being brought by the RTP

Price Base Year 0	Time Period Years	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £
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What is the geographic coverage of the policy/option?		England and Wales		
On what date will the policy be implemented?		TBC		
Which organisation(s) will enforce the policy?		MoJ		
What is the total annual cost of enforcement for these organisations?		£ NA		
Does enforcement comply with Hampton principles?		Yes/No		
Will implementation go beyond minimum EU requirements?		N/A		
What is the value of the proposed offsetting measure per year?		£ 0		
What is the value of changes in greenhouse gas emissions?		£ 0		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)				(Increase - Decrease)
Increase	£	Decrease	£	<b>Net</b>
				<b>£</b>

Key: Annual costs and benefits: Constant Prices (Net) Present Value



## Evidence Base (for summary sheets)

### 1. Title of proposal

Implementation of the relevant third party provisions of the Forced Marriage (Civil Protection) Act 2007

### 2. Objective

**To provide a relevant third party to apply for a Forced Marriage Protection Order on behalf of victims of forced marriage who might not be able or willing to do so.**

To consider the impact of the implementation of the provisions in the Forced Marriage (Civil Protection) Act 2007 to enable local authorities to act as relevant third parties for the purposes of the Act.

### 3. Background

The Forced Marriage (Civil Protection) Act 2007 enables courts to make Forced Marriage Protection Orders. These orders are intended to protect individuals who have, or are being forced, into marriage.

The Act has provisions that provides for those who are not in a position to apply personally to obtain the courts' protection, by enabling others to act as relevant third parties (RTPs). RTPs are defined as a person or organisation that can apply on behalf of another as of right without the need to obtain the court's permission. In addition, anyone can apply on behalf of victims with the permission of the court.

A regulatory impact assessment was completed for the Act for its passage through Parliament and this will be updated when the Act comes into force. An initial impact assessment on the provisions for the implementation of the relevant third party

### 4. Rationale for government intervention

Government has sought and considered the views of a number of stakeholders ranging from a variety of public, private and voluntary organisations dealing with domestic violence and forced marriage. The consultation process enabled the Government to identify who should be a relevant third party and who is best placed to represent forced marriage victims. The Lord Chancellor has responsibility for appointing the RTPs.

### 5. Consultation

The consultation paper 'Forced Marriage (Civil Protection) Act 2007 – Relevant Third Party' was published on 12 December 2007. The consultation asked what need there was for a relevant third party, what type of people or organisations should act and what safeguards were needed. It also invited practical suggestions on how the making of an application can be adapted to meet the needs of those who use the Act. The consultation paper can be found at <http://www.justice.gov.uk/publications/cp3107.htm>

The consultation period closed on 14 March 2008 and 55 respondents representing a broad spectrum of voluntary and non-voluntary organisations responded. Generally respondents felt that local authorities had the professional knowledge as well as the financial and other resources to act as a RTP. Based on the benefits highlighted in the consultation and the views of the respondents, the Government is initially appointing local authorities as RTPs.

### 6. Options

#### a. Make no provision for a relevant third party

Under this option there are three ways in which a Forced Marriage Protection Order could be made, namely

- the victim's own application
- an application made on behalf of the victim (by a person)
- the court making an order in existing family proceedings

*Pros:*

- Where the victim does not apply, it would be for the court to decide whether an application by someone else was genuinely in the victim's best interests before leave to make the application was granted.

*Cons:*

- Forced marriage victims, particularly children and vulnerable adults would not have the added safeguard of having an appointed body that could apply for an order to protect them against forced marriage without the need to obtain the court's permission.
- The policy of tackling forced marriage could remain outside mainstream policies at a local level
- A victim of forced marriage may not know anyone who would be prepared to make an application for an order on their behalf if they were unable to make one personally.
- Any other person would have to apply for leave of the court. One of the circumstances the court would consider before granting leave is their connection to the forced marriage victim.

#### **b. A voluntary sector organisation as a relevant third party**

*Pros:* The voluntary sector is seen as:

- having the trust of victims and an understanding of the dynamics of forced marriage
- 'motivated' by a desire to help forced marriage victims
- having a body of specialist knowledge on how to deal with forced marriage victims and the context that arises in forced marriage cases
- having access to a network of support organisations, such as refuges and counselling services, which can help victims of forced marriage
- being the first contact for victims of forced marriages

*Cons*

- lacking statutory powers to protect children and vulnerable adults
- may not have access to legal services
- may not be ready to immediately assume the role of relevant third party and will need additional funding for training and the provision of guidance. This would therefore make this change considerably more expensive than the proposed solution
- may not have knowledge of a multi-agency approach or be in a position to adopt a broad approach to dealing with individual cases (i.e. taking account of factors such as the educational, mental and physical welfare of victims)
- may not have guidelines and policies to inform their actions
- are not accountable to the public
- generally do not have a wide geographical spread and may not be able accessible to victims on a national basis

#### **c. Local authorities as a relevant third party**

*Pros:*

- have the resources act as a relevant third party within the existing services that they provide
- have their own in-house legal teams familiar with making applications to the court
- already use a multi-agency approach when dealing with cases
- are easily identifiable to the community
- have professional codes of practice
- have capacity to act in accordance with information protocols balanced against the needs of confidentiality
- are ready to act as soon as designated
- have existing child protection policies and statutory powers
- have links with local voluntary organisations
- have an understanding of regional issues which impact on forced marriage
- operate on a local basis and have easily accessible services
- appointment of all local authorities would offer national protection
- ensures that tackling forced marriage is brought into mainstream policies

*Cons:*

- may need future support to develop an understanding of cultural issues relating to forced marriages
- may be viewed as less approachable than other organisations

Option c is the recommended option.

## 7. Benefits

The potential benefits of local authorities being relevant third party are that:

- they have financial, professional and legal resources in place
- they are based in the community which reduces the costs incurred for travel i.e. voluntary organisations may not be based in the locations of the 15 county courts dealing with the Act and would incur the costs of travelling to court locations to make an application or to attend a hearing
- they have experience in dealing with children and vulnerable adults experiencing domestic violence
- it ties in with their existing responsibilities for children and vulnerable adults

## 8. Costs

The volume of cases will be the main factor in costs for this policy. Based on statistics from the Forced Marriage Unit, the range of 5 to 50 cases a year represents a best estimate available from the number of cases that will result from Forced Marriage (Civil Protection) Act 2007. The Forced Marriage Unit (FMU) indicated that of the 400 cases they deal with every year, two thirds would not include circumstances that would be covered by the Bill, while about 100 would. They considered that as few as 5 of these a year might necessitate an application to the courts. It is likely that cases might begin at the lower end of this range and gradually increase in numbers as the legislation becomes more familiar to those helping victims of forced marriage. The numbers of people choosing to use the new provisions may, however, remain very low. It was estimated that about 30 applications involving forced marriage come to the High Court each year. These existing avenues of court protection (e.g. wardship and inherent jurisdiction) are not expected to change through the appointment of the relevant third party.

It is difficult to assess whether the availability of a relevant third party will mean more applications are made or if victims will choose to use a RTP rather than make their own application. To some extent this depends on whether the RTP acts only when the victim cannot or where the victim can but does not want to make an application personally. For the purposes of the RTP consultation it is estimated that 2 new cases are brought to the court because of the appointment of a relevant third party (ie the cases would not have been brought without a third party applicant). It also assumes that 3 cases are brought to the court by the relevant third party instead of the victim who would have otherwise made their own application. There was support for the suggested low numbers of cases per annum from a respondent to the RTP consultation.

The cost of £2800 per case is based upon the assumption that support is provided for the victim for 6 weeks and a legal adviser for 4 days. The average wages for these roles has been based on Office of National Statistics data. The total of £14000 per annum is for 5 cases. It should be noted that this cost is not per local authority and many will not incur any cost at all if they choose not to make an application or they are not approached.

No provision is made for transitional costs at this stage. Lawyers would be expected to become familiar with the legislation as part of their professional responsibilities imposed by Continuing Professional Development requirements. The role of the RTP will complement the statutory guidance that all local authorities will become subject to this year and will build on the knowledge staff will have already gained. Any cost attributable to staff learning about the role of the RTP will become clearer once the scoping work has been undertaken to prepare local authorities in the next 9-12 months. However, this cost is expected to be minimal.

The impact assessment does not consider costs resulting for a local authority as the result of actions that may or may not happen as a result of obtaining a Forced Marriage Protection Order because such actions would be impossible to quantify. Local Authorities already have a duty to house people under some circumstances. This will not change as a result of the implementation of the RTP provisions. If a person does become homeless, it may be for many reasons not directly attributable to the fact that they have applied for a Forced Marriage Protection Order. Indeed it could be argued that because a person is able to get a Forced Marriage Protection Order, they become less likely to run away from home and therefore homeless and that there is a net saving to the local authority. As these possible consequences are so far removed from the application for a Forced Marriage Protection Order, it is impossible to accurately or fairly assess the consequences of making an application as it is not clear what they may or may not be.

## **9. Risks**

The relevant third party will be able to make an application for anyone without the need for the court's permission and without demonstrating a close connection to the applicant (as is the case if a person makes an application on behalf of a forced marriage victim). The risks that might arise are:

- applications could be made that are not in the best interests of the victim
- applications could be commenced without the permission of the victim

It is anticipated that these risks will be minimised through the safeguards that will be put in place before local authorities are appointed as the Relevant Third Party.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	No
Small Firms Impact Test	No	Yes
Legal Aid	No	Yes
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	No
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

### Small Firms Impact Test

There will be no impact on small firms.

### Competition assessment

No impact on competition is foreseen

### Enforcement, sanctions and monitoring

There are three types of applicants under the Act namely the victim, the relevant third party and someone on behalf of the victim who obtains the courts permission to apply. There will be ongoing monitoring of the numbers of applications made for Forced Marriage Protection Orders and this will include which type of applicant is applying to court. We plan to evaluate the appointment of local authorities 12 months from the date the provisions came into effect. If a RTP has not acted appropriately then this may identify a further training need or knowledge gap. The Lord Chancellor has the power to make an organisation a RTP through an Order, and this maybe changed to remove an organisation if necessary.

### Equality Impact Assessment

An initial Equality Impact Assessment was undertaken as part of the Partial Regulatory Impact Assessment during the passage of the Act through Parliament. Information gathered as part of this consultation will feed into a further Equality Impact Assessment to be published.

The introduction of a relevant third party applicant is likely to impact on: -

- individuals, in practice particularly those from South Asian cultural and ethnic groups in so far as it would offer an alternative to making an application personally
- Families or communities who seek to force an individual into marriage
- Voluntary and support groups who provide services to individuals

Different groups of people will use the Act at different rates and will have different needs, experiences and issues in relation to the legislation. These will relate to:

- age (most victims are between 15-24)
- gender (85% of victims are women)
- racial group (90% of victims are of Pakistani or Bangladeshi heritage)
- religion (90% of victims are Muslim)

In 2007, the Forced Marriage Unit dealt with approximately 400 cases. The majority of the Forced Marriage Unit's cases, involved families of Pakistan (65%) and Bangladeshi (15%) origin with a smaller percentage of Indian and South Asian families. Fifteen per cent of cases involved men and 30% of cases involve minors.

The policy to introduce relevant third party is, however, sensitive in other ways to the particular needs of different groups of people. Although there may be a greater uptake of the relevant third party amongst different racial, social, religious and gender groups, the policy does not discriminate either positively or negatively against any particular group of people – the provisions are available for all to use. There is equally nothing in the legislation, which compels a person to use it – it is there to be used at an individual's discretion when he or she feels that it would help improve their personal situation. A potential adverse affect of the policy is that it might be interpreted as a cultural criticism of BME communities or religious groups. However, the policy has a positive benefit in that it assists BME groups.

Victims of forced marriage with learning disabilities may need additional support to assist them in following the court process and to help them make informed choices and decisions. There have already been court cases where local authorities have intervened to protect victims of forced marriage victims who have learning disabilities. Appointing them as a RTP should help support the work they are already undertaking in this work.

### **Legal Aid and Administration of Justice Test**

As set out at 9 above, for the purposes of this consultation we have assumed that 2 new cases are brought to the court because of the appointment of a relevant third party (i.e. the cases would not have been brought without a relevant third party). It also assumes that 3 cases are brought to the court by the relevant third party instead of the victim who would have otherwise made their own application

The annual cost to HMCS of administering the cases, including court and staff time, is estimated to be £600 per application. Therefore assuming that only 2 new cases have been brought the cost to the court is £1200. Enforcement costs and variation costs have been assumed to be negligible in comparisons to these costs.

The current cost to legal aid based on five cases per annum is calculated at £18,757. This is based upon the following assumptions:

- Only half of the potential applicants taking initial legal advice will go on to full representation. A unit cost of £216 is used for each act of assistance under the legal help scheme
- All applicants and half of respondents would qualify for legal aid
- For those receiving full representation we have used the average cost of a stand-alone domestic violence case as the cost basis of the model i.e. £2,430 per applicant and £1,482 per respondent.

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[Forced.marriages@hmcourts-service.gsi.gov.uk](mailto:Forced.marriages@hmcourts-service.gsi.gov.uk)