

**EXPLORING THE VIABILITY OF CREATING A
SPECIFIC OFFENCE FOR
FORCED MARRIAGE IN ENGLAND AND WALES:
REPORT ON FINDINGS**

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1. Introduction

On 26 May 2011, the Forced Marriage Unit held a non-governmental organisation (NGO) round-table to discuss the Home Affairs Select Committee's report of 17 May 2011 on whether to criminalise forced marriage. The report argued in favour of forced marriage being recognised as a specific criminal offence: therefore, it recommended that new criminal legislation be developed. In paragraph 12, the Committee justified criminalisation on the basis that:

It is not at all clear that the [current Forced Marriage Protection] Act [which is a civil law] is wholly effective as a tool in protecting individuals from forced marriage and from repercussions from family members. While the measures in the Act should continue to be used, we believe that it would send out a very clear and positive message to communities within the UK and internationally if it becomes a criminal act to force – or to participate in forcing – an individual to enter into a marriage against their will.

At present, fifteen county courts have been identified as 'specified' for the purposes of the Act: this means that they can issue applications for forced marriage protection orders (see Section 2.3 for a discussion of FMPOs). These courts were chosen on the basis that they were in or near areas with a high rate of forced marriage cases (a supposition that has proven largely accurate). Why were the views of these courts and also local authorities, NGOs, police, lawyers and other stakeholders not canvassed by the Home Affairs Committee: why was the decision taken to rely mainly on input from a single NGO (Karma Nirvana) and a solicitor (Chris McCurley) operating in Newcastle, especially given the wide consultations that preceded the creation of the Forced Marriage (Civil Protection) Act (see Section 2.3) Judge Pearce raised these questions in a written submission to the Ministry of Justice: "the information given by and the views advocated by two individuals, both operating in the North East, forms the basis for the recommendation that a new offence be created" (2011: 1). She goes on to argue that the report "is subjective and has very limited force and credibility", concluding that "It is therefore astonishing that the inquiry did not seek evidence from and the views of stakeholders and professionals from all or the majority of the regions who are directly concerned with forced marriage cases" (Pearce, 2011: 2).

As a result of the round-table meeting, a number of NGOs requested that the independent survey on the feasibility of criminalisation, conducted by Roehampton University, be extended so that they could respond. In defending their request, these groups argued that although written evidence from Southall Black Sisters and from relevant Government departments was referred to in the report, only one NGO (Karma Nirvana) was invited to give oral evidence. Moreover, while Chris McCurley discussed criminalisation from a family law perspective, and Karma Nirvana offered evidence about the lack of enforcement of orders, no other evidence was explored (Judge Pearce, 2011: 2). Therefore, methodologically, as well as ethically, the report's conclusions and recommendations are questionable.

The Roehampton University study, on the other hand, invited respondents to answer 10 primarily qualitative, open-ended questions (see Appendix A) designed to explore their views – both positive and negative – about criminalisation, their experiences of working to tackle forced marriage and their opinions on the consultation document. Roehampton's Social Research Centre received 74 written responses (by email or post) between 11 February and 4

June 2011. The study therefore represents a significant source of detailed information about the views of NGOs and community groups working on forced marriage and related issues. The respondents generally agreed that legislation alone would have a limited impact and that more holistic support mechanisms, a sustained training programme aimed at relevant professionals, and an equally comprehensive awareness-raising campaign aimed at affected communities and the wider population) would be necessary to combat the problem of forced marriage.

Before analysing the results of the survey, it is necessary to provide some context for the arguments and recommendations put forward by the respondents.

2. What is forced marriage?¹

2.1 Definitions of forced marriage and legislative responses

Forced marriage is a form of gender-based violence that has received particular attention from both the media and policy-makers in recent years. The issue, which also encompasses early and child marriage (because minors are deemed incapable of giving informed consent),² is specifically recognised as an abuse of human rights in a number of UN treaties and other international instruments; however, different instruments employ different definitions. For instance, the 2005 Council of Europe study, *Forced Marriages in Council of Europe Member States*, provides a broad definition under which ‘forced marriage’ constitutes an

umbrella term covering marriage as slavery, arranged marriage, traditional marriage, marriage for reasons of custom, expediency or perceived respectability, child marriage, early marriage, fictitious, bogus or sham marriage, marriage of convenience, unconsummated marriage, putative marriage, marriage to acquire nationality and undesirable marriage – in all of which the concept of consent to marriage is at issue[.]³

In England and Wales, the Marriage Act 1949 and the Matrimonial Causes Act 1973 together constitute the law on marriage. Section 12c of the Matrimonial Causes Act 1973 states that a marriage shall be rendered void if “either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind, or otherwise”. This reflects the core issue common to all definitions: that forced marriage violates an individual’s fundamental right to freely consent to marriage. This right is enshrined in the instruments known collectively as the International Bill of Human Rights: the Universal Declaration of Human Rights (1948),⁴ the International Covenant on Civil and Political Rights (1966),⁵ and

¹ This section of the paper draws on the following book: Gill, A. and Anitha, S. (2011) *Forced Marriage: Introducing a social justice and human rights perspective*, London: Zed Books.

² Article 1 of the UN Convention on the Rights of the Child recommends that all States Parties establish 18 as the minimum age for consent. Convention on the Rights of the Child, UN General Assembly Resolution 44/25, UN Doc. A/44/49, 20 November 1989. Available at <http://www2.ohchr.org/english/law/crc.htm>.

³ Directorate General of Human Rights, *Forced marriages in Council of Europe member states: A comparative study of legislation and political initiatives*, Council of Europe, 2005, p.7. Available at http://www.tirol.gv.at/fileadmin/www.tirol.gv.at/themen/gesellschaft-und-soziales/integration/downloads/Leitbild-neu-Stand_Jaenner_2009/AK6-Gesundheit/Zwangsheirat_in_MG-Staaten_des_Euoparates.pdf

⁴ Universal Declaration of Human Rights, UN General Assembly Resolution 217A, UN Doc. A/810, 12 December 1948. Available at <http://www.un.org/en/documents/udhr/>.

the International Covenant on Economic, Social, and Cultural Rights.⁶ For instance, Article 16(2) of the Universal Declaration of Human Rights affirms that “Marriage shall be entered into only with the free and full consent of the intending spouses”, according to the Declaration’s underlying principles of self-determination and human dignity. Article 23 of the International Convention on Civil and Political Rights, and Article 10(1) of the International Convention on Economic, Social, and Cultural Rights, use similar wording to reiterate this right.

Article 16(1) (b) of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),⁷ which has been ratified by all EU Member States, also explicitly forbids forced marriage:

States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women; the same right freely to choose a spouse and to enter into marriage only with their free and full consent.

Article 2 further calls upon States Parties to ensure that “All appropriate measures [are] taken to abolish existing laws, customs, regulations and practices which are discriminatory against women”. The CEDAW’s recognition of the critical role that discriminatory customs, traditions and general inequalities play in forced marriage represents an important advance: not only does the instrument prohibit forced marriage, it also speaks to the conditions that underpin this practice. Moreover, the Committee on the Elimination of Discrimination against Women (the treaty body established by the CEDAW), which issued recommendations⁸ regarding the implementation of States Parties’ obligations, argues that it is not sufficient for domestic legislation to be CEDAW-compliant: failures to implement and enforce both the CEDAW and domestic legislation constitute violations of the Convention.⁹ In other words, developing legislation is only the first step in combating forced marriage and other forms of violence against women: legislation must also be acted upon effectively if these issues are to be dealt with and, ultimately, eradicated.

2.2 Which criminal laws can be used to tackle forced marriage in England and Wales?

All cases of forced marriage are different and should be considered on an individual basis. Depending on the specific circumstances, various criminal offences may be used in the prosecution of forced marriage cases. For instance, any or all of the following offences may apply:

⁵ International Covenant on Civil and Political Rights, UN General Assembly Resolution 2200A (XXI), UN Doc. A/6316, 16 December 1966. Available at <http://www2.ohchr.org/english/law/ccpr.htm>.

⁶ International Covenant on Economic, Social, and Cultural Rights, UN General Assembly Resolution 2200A (XXI), 16 December 1966. Available at <http://www2.ohchr.org/english/law/cescr.htm>.

⁷ UN Convention on the Elimination of All Forms of Discrimination against Women, UN General Assembly Resolution 34/180, UN Doc. A/34/46, 18 December 1979. Available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

⁸ Committee on the Elimination of Discrimination against Women, General Recommendation No 21: Equality in marriage and family relations, 13th session, 1994, UN Doc. A/49/38. Available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21>.

⁹ FM also breaches the right to bodily integrity guaranteed by a range of international human rights instruments, including Article 3 of the European Convention on Human Rights: European Convention on Human Rights, ETS No 005. 4 November 1950. Available at <http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>.

Common assault ¹⁰	Section 39, Criminal Justice Act, 1988
Common assault (arrestable offence)	Chapter 28, Part 2, Section 10, Domestic Violence, Crime and Victims Act, 2004
Cruelty to persons under 16 (including neglect and abandonment)	Section 1, Children and Young Persons Act, 1933
Failure to secure regular attendance at school of a registered pupil	Section 444, Education Act, 1996
Theft (e.g. of a passport to prevent a person from escaping a coercive situation)	Section 1, Theft Act, 1968
Child Abduction	Section 1, Child Abduction Act, 1984
Abduction of an unmarried girl under the age of 16 years old from a parent or guardian	Section 20, Sexual Offences Act, 1956
Abduction of a woman by force for the sake of her property	Section 17, Sexual Offences Act, 1956
Rape	Section 17, Sexual Offences (Amendment) Act, 2003
Aiding and abetting a criminal offence	Common Law Offence
Kidnapping	Common Law Offence
Threats to Kill	Section 16, Offences Against the Person Act, 1861
Harassment	Section 2, Protection from Harassment Act, 1997
Blackmail	Section 21, Theft Act, 1968
False imprisonment	Common Law Offence
Murder	Common Law Offence

Children at risk of being forced into a marriage are also entitled to the statutory protection afforded by the Children's Act 1989: protection and care orders may be obtained under Section 8 by individuals at risk, while local authorities may obtain orders on behalf of a child under Section 37. Police stationed at airports have successfully used the Emergency Protection Order provisions (Section 44) to prevent children who were deemed to be at risk from being removed from the UK.

¹⁰ Also note the following: charge of assault occasioning actual bodily harm (Section 47); wounding with intent (Section 20); assault causing grievous bodily harm (Section 19); all offences of assault but varying in degree of severity including the offence of manslaughter.

The options available for the protection of vulnerable adults depend on the nature of the individual's vulnerability. In some cases, protection might involve barring them from overseas travel or from undertaking a marriage. The Mental Health Act 1983 may also apply.

2.3 *The Forced Marriage (Civil Protection) Act 2007*

In September 2005, the Joint Foreign and Commonwealth Office and Home Office Forced Marriage Unit consulted on a proposal to create a specific criminal offence concerning forced marriage. They worked closely with leading academics and women's organisations (including Ashiana Network, Imkaan, Newham Asian Women's Project, Rights of Women and Southall Black Sisters) to assess the viability of the proposed legislation, which many stakeholders regarded as unlikely to be effective (Gill, 2006). One of the main arguments against the legislation was that a criminal offence would not represent an effective deterrent, nor would it provide adequate protection for victims. Furthermore, creating a criminal offence specifically addressing forced marriage would fragment laws and policy measures aimed at tackling violence against women in its many guises.

Those who argued against the measure also contended that it would add little to the existing body of law on murder, kidnapping and offences against the person (Imkaan, 2007; Newham Asian Women's Project, 2007): as demonstrated above, there are already a significant number of offences that can be used to prosecute offenders in relation to cases of forced marriage. Opponents of the legislation further argued that, as it would be difficult to obtain sufficient evidence in individual cases to satisfy a *criminal* burden of proof, the new law would have little to offer over existing legislation. Indeed, in the Roehampton University study, one officer from the South Tyneside Public Protection Unit, Northumbria Police, stated that "Forced Marriage Prevention Orders [see below] are being used effectively but with regards to criminal offences the points to prove in these situation are sometimes difficult."

Another concern was that the proposed criminal law might deter victims of forced marriage from seeking help from public authorities for fear that family members would be prosecuted as part of legal proceedings over which they, as victims, would have very little control since criminal prosecutions are brought by the State in the *public* interest, rather than being initiated by victims. Indeed, the literature demonstrates that police intervention is often counter-productive in cases of gender-based violence, especially in minority communities.

On 26 July 2007 the Forced Marriage (Civil Protection) Act (FMCPA), which is included within Part IV of the Family Law Act, received Royal Assent.¹¹ The FMCPA expressly prohibits the practice, inducement, or aiding of forced marriage, which is defined as (a) forcing or attempting to force another person to enter into a marriage, or a purported marriage, without that other person's free and full consent, or (b) practising deception for the

¹¹ In 2009, the Scottish Government also consulted on whether to create a criminal offence in relation to forced marriage, since Scotland has no specific forced marriage legislation. In September 2010, the Scottish Government presented the Forced Marriage (Protection Order) (Scotland) to the Scottish Parliament: the legislation revolved around a civil order with a criminal penalty on breach, operating in a similar way to the civil Non-Harassment Order. The Bill was passed on 22 March 2011 and received Royal Assent on 27 April 2011, though it will not enter into force until the statutory guidance, currently open to consultation, is printed in late 2011.

purpose of causing another person to enter into a marriage, or a purported marriage, without that other person's free and full consent.

The principal remedy under the FMCPA is the Forced Marriage Protection Order (FMPO): a form of injunction, made by a court, to prohibit certain acts that may lead to a particular person being forced into marriage from being performed by specific people. Since 25 November 2008, family courts have been able to make FMPOs to protect individuals from being forced into marriage: thus, the FMCPA makes it possible for *potential* victims to make applications prior to a forced marriage taking place. This is critical, as previous legislation had ignored the importance of affording protections and remedies to prevent forced marriage as opposed to merely dealing with cases after the fact.

The focus on protection and prevention, rather than on prosecution, is the crucial distinction between the FMCPA and the criminal statute that was originally proposed. Those in support of the FMCPA have argued that making injunctive relief available to potential victims is one of the law's most important and beneficial features (Southall Black Sisters, 2006). A significant added benefit identified by victims and their advocates is that the victim often stands a greater chance of reconciling with his or her family if the FMCPA is invoked rather than criminal legislation (Gill and Anitha, 2011; Newham Asian Women's Project, 2007). Since November 2008 there has been a steady increase in the use of FMPOs: 293 were issued between November 2008 and February 2011. However, evidence from the Home Affairs Committee suggests that there has been a "lack of agency follow-up to ensure compliance" (Home Affairs Committee, 2011: 1). Research in this area is currently underway to establish which factors are contributing to problems relating to compliance.

Although the civil remedies available under the FMCPA focus primarily on the protection of victims and the prevention of forced marriage, rather than on the punishment of perpetrators, the FMCPA does not preclude the possibility of a criminal prosecution: indeed, in certain instances, the public interest may require it. However, the FMCPA does not speak to the harm caused by the offence. Indeed, in the Roehampton University study a representative of the Merseyside Police Public Protection Unit argued that "offenders should know that forced marriage is morally, ethically and criminally wrong and by creating a specific offence I think this would send out a powerful message": many agree with this perspective, considering that the current civil legislation does not send a powerful enough message to communities and families that support the practice of forced marriage. One of the failings of the current civil legislation, is that it does not fully demonstrate why the criminal justice system should be interested in preventing and punishing forced marriage: thus, it lays little ground for criminal cases to be brought. However, the FMCPA does include powers of enforcement: those who fail to obey FMPOs may be found in contempt of court and sent to prison for up to two years. It also provides powers to arrest and (when appropriate) to remand into custody those suspected of perpetrating the offence.

Case Study

In August 2008, Dr Abedin was duped by her family, who claimed that her mother was seriously ill, into returning to Bangladesh. Her parents hid her passport and plane ticket, then held her captive for four months until she alerted her British Hindu boyfriend, via email, that she was in danger and was considering taking her own life. She had been subjected to physical violence, psychological abuse and also, under coercion and duress, a forced marriage. She was also denied contact with friends and lawyers. Although the FMCPA is not enforceable in Bangladesh, and Dr Abedin is not a British citizen, her UK-based lawyers (Anne Marie Hutchinson/Dawson Cornwell Solicitors) worked successfully with the authorities in Dhaka to ensure her release in December 2008. On 15 December 2008, she was finally able to return to the UK. Her lawyers immediately appeared at the High Court in London to instigate nullity proceedings to void the marriage she had been forced into in Dhaka (Blakely, 2008).

3. Roehampton University study: An independent consultation on the criminalisation of forced marriage

Seventy-four written responses to the survey consultation (see Appendix A for a list of the survey questions) were received between 11 February and 4 June 2011. Critically, 50% of respondents felt that, on balance, the Coalition Government should not create a specific offence concerning forced marriage, while 64% felt that the existing legislation was sufficient to tackle the issue.

3.1 *Sample*¹²

Respondents were grouped into eight broad categories for the purpose of analysis:

- local councils;
- organisations concerned with domestic violence/ violence against women (including service providers, forums and partnerships);
- educational organisations;
- faith groups;
- individuals;
- other public sector organisations/ workers (including local authorities, and NHS staff);
- other voluntary sector organisations/ workers (including community councils, organisations with a focus on women's issues and equality issues, and those working with families, children and young people); and
- police and legal experts (including judges, lawyers and case progression court staff).

¹² See Appendix B for a list of respondents

A third of responses came from those working to address violence against women: a further quarter were received from police and legal respondents.).

Type of respondent	Number	Percentage of total
Local councils	5	6
Organisations concerned with domestic violence/ violence against women and girls	25	33
Educational organisations	1	1
Faith groups	5	9
Individuals	9	12
Police and legal experts	17	23
Other public sector organisations/ workers	6	8
Other voluntary sector organisations/ workers	6	8
	74	100

Table 1: Pattern of responses by type of respondent

3.2 **Question 2: Do you think victims and potential victims would be less likely to seek help if forcing someone to marry became a specific criminal offence?**

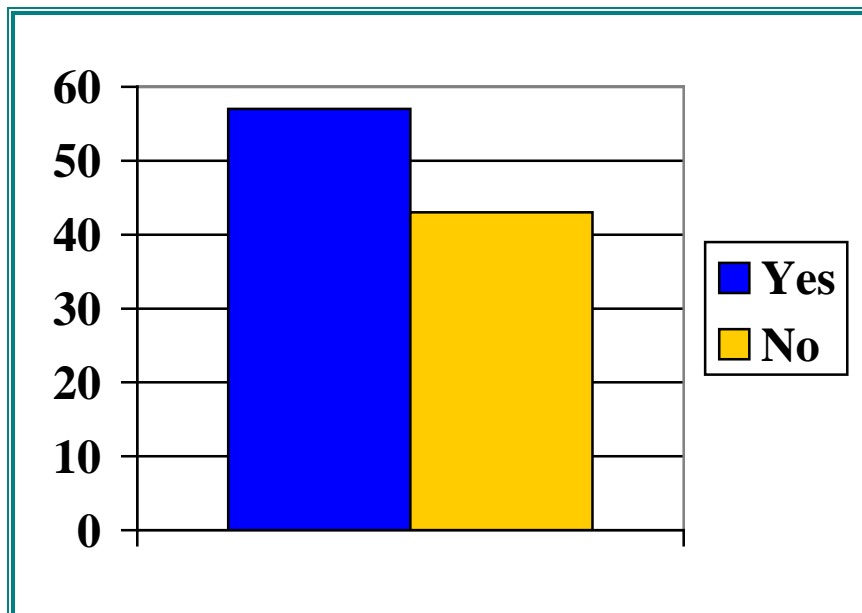


Figure 1: Responses to Question 2

The majority of respondents (57%) believed that criminalisation would make it more difficult for victims to come forward, many citing reasons similar to those of Luton All Women's Centre:

It is already very difficult for vulnerable young people and in particular women to seek support help and advice in this situation. The fact that their family may be criminalised and face charges will be a step backwards as they will be even more reluctant to come forward.

However, 43% disagreed. It is significant that the sample was so divided. This being the case, it is worth considering whether phrasing the question in the negative might have influenced some respondents to agree with the statement where they might otherwise have answered in the negative or given a less concrete response. Moreover, the fact that respondents were encouraged to answer either in the negative or positive may have meant that a significant group who either had no definite views or felt that there would be little effect might have been rendered invisible. This seems likely given the dismissive explanatory answers offered, *inter alios*, by the Social and Family Affairs Committee of the Muslim Council of Britain:

Forced marriage is domestic violence. It will make no difference to the victim to have it as a specific criminal offence. The victims and potential victims need support services/ advocates within the community. They need to have the confidence in their advocates. The confidence that the issue will be resolved without causing irreparable damage will make the victim/ potential victim seek help.

Here, it is significant that the respondent feels that the nature of the legislation is far less significant in terms of helping victims and encouraging them to come forwards than the practical measures and support available to assist them. Similarly, the reply from a representative of Eaves Housing for Women indicates that, if forced to answer 'yes' or 'no' her answer will be 'yes' but that, overall, she feels there is insufficient evidence to give an adequately informed answer:

I do not think there is enough knowledge to take an informed decision. I have previously held it is not what victims want and could deter them from seeking help. I fear also it is too easy for offences to become over associated with particular communities already under siege. I appreciate the desire to send an equally strong message for this form of abuse as for other abuses. However I think existing criminal and civil measures, if properly applied, may be adequate for now. I think we need to continue to build the trust of those affected by these offences before we move to a next stage of criminalisation though it may be that at a future date this would be appropriate. It needs more research with the potential, current and past victims who have sought help as their experience would inform what works or not and would change in retrospect. Many young women living with a possible imminent risk think that if it were just criminal then their parents would drop it. But many young women who have been actually faced with a forced marriage and sought help in the crisis have said that criminalisation would not have been useful or helpful in preventing the situation arising or in accessing help.

The respondent is clearly conflicted, seeing both positives and negatives in the possibility of criminalisation but, overall, judging that only further research will clarify whether the positives outweigh the negatives or *vice versa*.

3.3 Question 3: Do you think there are already sufficient criminal offences and protective measures? Are they being used to full effect?¹³

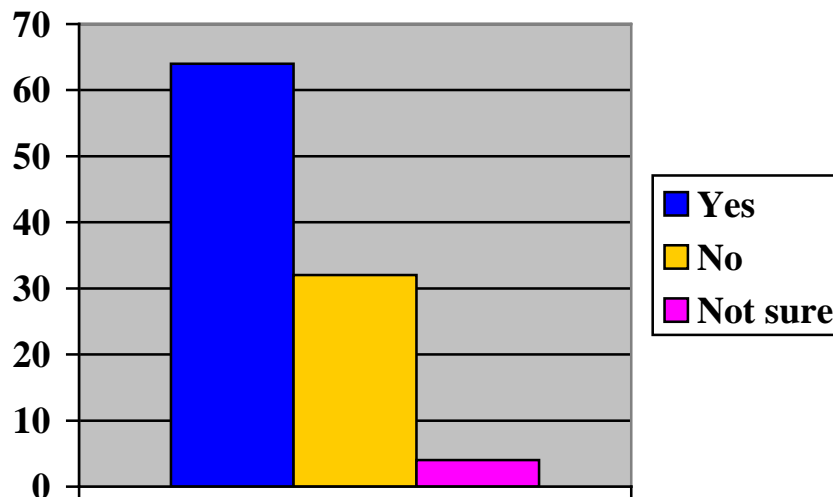


Figure 2: Responses to Question 3

The majority of respondents (64%) indicated that the existing legislation was sufficient to tackle cases of forced marriage, many echoing the respective responses from Suffolk Police, the Chair of Hindu Nari Sangh, and AVA (Against Violence & Abuse): “There are sufficient criminal offences and protective measures available; however, I don’t feel they are being used to their full effect”; “There are enough laws and criminal offences but not used effectively”; and “Yes there are sufficient laws. Are they being used to full effect? Not really but then when it comes to women are any of the laws used to full effect? The creation of yet another law wouldn’t change this.” However, Bedford Borough Council disagreed on this point: “In our case examples there was [*sic*] sufficient criminal offences in place and we were able to use them to their full effect.”

Meanwhile, the Leader of the Association of Chief Police Officers ACPO Programme for Honour-based Violence, Forced Marriage and Female Genital Mutilation expanded on why existing measures were not always implemented effectively:

I think the existing criminal framework used in conjunction with FMPOs is adequate for dealing with cases of forced marriage. I think there is room for improvement in how these measures are being used and this is directly related to the knowledge and awareness of practitioners. For this reason ACPO has spent a lot of time working with NPIA to develop training packages for all front line practitioners as well as more specialist packages for investigators. Both of these training packages are due to be rolled out later this year.

¹³ See Appendix C for additional quotations from responses to Question 3

The response of the SKY Project coordinator parallels these arguments: “there are enough measures in place with the advent of FMPO’s [*sic*]. There needs to be further training and awareness of the full range of laws that can be used in these cases.” This perspective, shared by a significant number of respondents across a range of categories within the sample, harks back to the arguments made by the representative of Eaves Housing for Women with regard to more research being needed before it will be possible to make a truly informed judgement regarding whether additional legislation is needed.

However, many respondents also argued that part of the reason existing legislation is not more effective is that (a) insufficient training has been provided to relevant professionals and (b) both relevant professionals and the wider public are not aware of the legislation or the breadth of its powers. A police officer from Luton Police Station responded that “Training needs to be more embedded in all the strands of the prosecution process and a wider and better understanding [of the] judicial process could improve the present status quo.”

Similarly, Merseyside Police Public Protection Unit argued that:

If awareness raising and training is delivered across all ranks then officers would become more confident when confronted with [forced marriage] and this would help them recognise how to utilise current criminal offences. ... [B]etter evidence gathering would lead to a better use of the existing law in enabling [the] CPS [Crown Prosecution Service] to make better decisions. However the fear of a lot of victims to provide prosecution statements and evidence has a big impact on the ability to prosecute.

Meanwhile, Iranian and Kurdish Women’s Rights Organisation (IKWRO) expanded on the specifics of how and why additional training would impact how successfully cases of forced marriage are dealt with:

The CPS should continue to invest in specialist forced marriage and HBV [honour-based violence] prosecutors. ... [L]ow awareness among police on the frontline is one of the most significant barriers. There are still too many police officers with only very limited understanding of concepts such as forced marriage or ‘honour’ based violence. There is also a tendency to disbelieve teenage girls or to assume that they are exaggerating, and although the situation is improving we still have to work hard to get police to take allegations seriously. More must be done to ensure that basic training in forced marriage reaches frontline officers and staff. The National Police Improvement Agency are currently developing a training module in Forced Marriage, HBV and FGM [female genital mutilation] and this must be rapidly rolled out. In line with the Forced Marriage guidelines, training needs to focus not only on the police’s investigative role where a crime has taken place, but also on safeguarding those at risk and preventing forced marriage from happening.

Meanwhile, Eaves Housing for Women argued that what is really needed is:

Improved training, improved recording of relevant incidents in an appropriate and identifiable way, improved investment in public sector staff with specialisms and in non[-]statutory specialist BME [black and minority ethnic] support. Improved

application of a human rights and equality framework - contrary to the current approach that seeks to backtrack on both equalities and human rights. And a meaningful, egalitarian and respectful cooperation between BME non [-] statutory specialist advocates and the public sector.

This picks up on a number of important points, including the need for training that existing legislation might be used effectively, the need for better recording of incidents and better funding for the specialist services best placed to assist victims (see also Section 3.4). In terms of this last point, the issue of collaboration between government agencies and services and NGOs and voluntary services is crucial. Many community-based organisations act as gatekeepers, providing also not only access but also conveying, through the granting of access, a degree of trust that renders education and awareness-raising programmes far more likely to meet success.

However, nearly a third of respondents disagreed that existing legislation is sufficient. For instance, Iranian and Kurdish Women's Rights Organisation (IKWRO) responded that:

The existing criminal offences are [not] sufficient because they are not specific enough to forced marriage. Firstly, depending on the victim's experience of violence or abuse physical violence, abduction or threats may be part of forcing someone into marriage, there are cases where no crime has been committed but where the victim – who is usually young and vulnerable – has been subjected to significant emotional and psychological pressure. A specific offence is needed to cover forced marriages of this kind and to send out a strong message to practising communities. In terms of FMPOs, increasing numbers of these are being issues and this is a positive thing, but we have concerns that with FMPOs the onus is on the victim. She has to decide to push for the order. The women and girls we have worked with often say this is what they found most difficult. With a criminal offence the burden would be more firmly on the state and on those responsible for protecting vulnerable women and girls.

Here, the statement from IKWRO echoes that from the representative of the Merseyside Police Public Protection Unit in stressing the importance of sending a “powerful message” (see Section 2.3) about the fact that forced marriage is not acceptable, legally or morally. However, this response sheds new light on the issue that criminal cases are brought in the public interest: there may be some advantages in that victims, thus, do not have to bring a case against their own family.

3.4 Question 6: Would the effort of creating a new offence be justified? Might the resources be better used on other violence against women work?¹⁴

Only 31% of respondents felt that the expense would be justified: as a lawyer from Save Your Rights put it, it would be a “Total waste of resources to create a criminal offence. Resources could be [better] diverted to assisting with the civil remedies and ancillary matters - refuges, outreach.” The majority of respondents believed that resources could more usefully be devoted (especially during these difficult economic times) to tackling the issue through non-legislative routes, such as increased education, awareness-raising (including about the

¹⁴ See Appendix C for additional quotations from responses to Question 6

FMCPA), and better support for victims. For instance, a case progression officer from Luton County Court suggested that:

The resources in bringing about this change could be used more effectively in supporting women (especially the college age range) and give them assistance in moving away and living independently or the money spent in media awareness by having bi-lingual visual adverts on free Asian channels warning people of FMPOs [from] both a victims [*sic*] perspective and that of what could happen to perpetrators.

Indeed, 60% of the respondents argued that the single most important use of resources is the funding of violence against women services and refuges: this is where the many of the respondents argued that the Coalition Government should focus its limited resources in the present climate. A violence against women activist replied that:

The effort of creating a new offence at a time when economic restraint and frugality are necessary is wasteful. The energy, time and funding should be directed to where it is already proven to show results; to better equip those groups with a successful track record in this work, albeit on a shoe-string budget.

The response from Southall Black Sisters echoes these views: “Also need funding of specialist BME [black and minority ethnic] women’s services to provide advice, advocacy, safe housing and support to victims.” Meanwhile, the response from Imkaan expands on exactly what services and support this funding would help to provide:

Resources would be better used to support victims to access safety, prevention [-] focused work, effective community engagement, and work to support the development of new attitudes around issues of forced marriage. There is much work to be done in order to prevent forced marriage from taking place and to support victims. Resources should focus on strengthening existing remedies rather than on the development of a specific offence.

Similarly, Ashiana (Sheffield) replied that “We need to spend those resources on more specialist services for BME women in this position and more preventative education programmes in schools, colleges and communities”, while an ACPO Staff Officer held that “community[-]based work is of paramount importance. It should be aimed at breaking down cultural myths and building confidence in communities to work with the police and other organisations to address these issues.”

Education and awareness-raising programmes were also identified as important uses of existing, limited resources by many respondents, including by the Chair of Hindu Nari Sangh, who stated that “Most people from the communities where forced marriage is rife have very little awareness of what the law is and who they can contact. There should be more awareness raising.” Ashiana Sheffield takes this point forwards:

I would encourage better use of MARACs, more awareness raising in schools and communities to encourage early referral and self-referral and more funding for specialist Black women’s refuges and support services providing safe spaces for victims to disclose in.

Here, the connection between awareness-raising and better funding for NGOs and specialist services is made explicit: awareness-raising in the relevant communities is only possible with the support, expertise and access that these organisations can provide. The view that these issues are interconnected is shared by a number of respondents, including the Director of the Bangladesh Legal Aid and Services Trust, who stated that both “Greater availability of legal aid for such cases” and “Greater dissemination of information on remedies for women and girls in particular” are needed. Bedfordshire Race Equality Council expands on this point, suggesting “Projects that educate and make more understanding in communities not just here but abroad” are crucial, pointing to the role of international collaboration aimed at tackling forced marriage: this picks up on the issue (explored in greater depth in Section 3.5) of families attempting to circumvent legislation by taking girls and women abroad that they might more easily be forced into marriage. For instance, the Social and Family Affairs Committee of the Muslim Council of Britain stated that “making FM a specific offence will [not] make any difference to the number of prosecution[s]. It may drive more perpetrators to remove the victim from the country.”

Meanwhile, a member of Savera, Liverpool, introduced another element to this argument, pointing out that:

Current measures are good but need to be better handled by agencies. If resources were concentrated on awareness raising, training and policy & procedure development there would be more cases spotted and more individuals protected.

In other words, existing legislation is not always effectively used as only some relevant professionals have sufficient training regarding, and knowledge of, the issues at stake. Therefore, not only do they fail to adequately understand the key issues in individual cases, they also fail to use the law – civil and criminal – to the victim’s best advantage. Expanding on this, a respondent working at Bristol County Court argued that:

The issue here is awareness. Support agencies and the police may not understand the concept of a ‘forced marriage’ and this can lead to victims not receiving the appropriate support or proceeding with an FMPO. Victims need to be treated differently to a stand-alone domestic abuse victim. Agencies and police may not class this as a serious issue and may feel pressure from parents or communities to return the child/victim back to their family to mediate. This can lead to serious consequences such as honour based killing[s] (Banaz Mahmud being a most notable case). There needs to be a multi-agency network of awareness and sharing of information and also identifying forced marriage victims. A person who has suffered domestic abuse or a child who do[es] not come back to school from a holiday could be indicators of forced marriage. Many victims only have one chance to seek help so agencies/support services need to work quickly.

Here, the respondent identifies the solution to the problem of families taking girls and women abroad in order to force them into marriage as centring on the need for better training for the staff of relevant agencies and services. However, the respondent also points to wider problems with how forced marriage is tackled and, indeed, whether it is recognised in the first place: these problems the respondent puts down to lack of training and understanding on the part of key government agencies, many of which consider forced marriage a form of domestic violence. This issue is picked up by AVA (Against Violence & Abuse):

I am not convinced that the law is the answer and in many respects, this is why lumping together partner violence and family violence doesn't always work. Forced marriage is a good example of where the victim's experiences and feelings are often subtly different - violence from a partner is not the same (similar yes but not the same) as violence from a family member. There are two key differences in particular - firstly that you cannot stop being someone's family member in the same way that you can stop being someone's partner (we see this same dynamic in child to parent violence). The second is that parents committing FM [forced marriage] often believe that they are doing it for the victim's own good which is not a common way that partner abuser's [*sic*] justify their behaviour! This is not to say that the law shouldn't offer protection or indeed be strengthened but most of the survivors with whom we have consulted don't want this [a specific criminal offence] and would prefer efforts to be focused on challenging and changing the views of those that still think FM is acceptable.

However, Imkaan's response directs attention not to how different forced marriage and domestic violence are, but to the importance of understanding forced marriage as a particular point on a broad continuum of violence against women. This stress on the commonalities rather than differences between different forms of gender-based violence is directed primarily towards exploring underlying causes and complicating factors relating to wider categories of gender-based inequality: "there is a need for policy makers and practitioners to make the link between forced marriage and other forms of VAWG [violence against women and girls], so that forced marriage is contextualised within the VAWG framework.

3.5 *Question 10: On balance, should the Coalition Government introduce a specific criminal offence for forced marriage? Explain why.*

The responses to this question separated into three categories: a distinct 'yes' or 'no' or an answer that indicated that the participant was unsure. Over a third (38%) of respondents were in favour of creating a specific criminal offence, while 50% were against and 12% were 'unsure'.

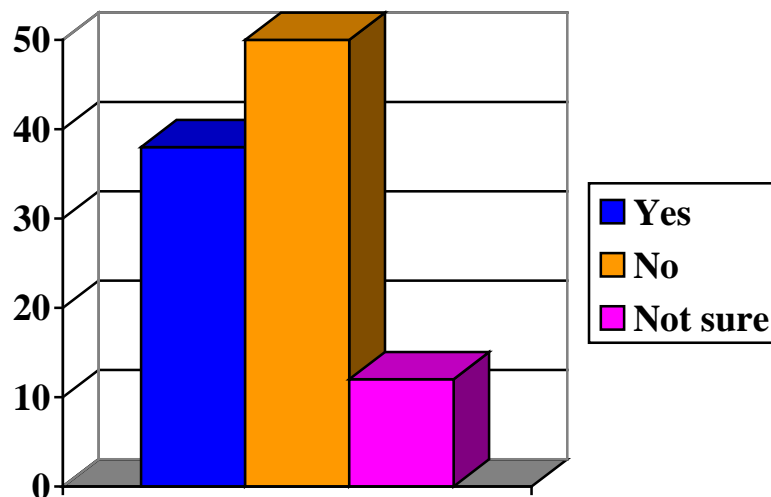


Figure 3: Responses to Question 10

There was significantly less support for creating specific legislation among response groups with (a) direct experience of working/ living in the communities involved, (b) responsibility for policing and prosecuting work concerned with forced marriage cases, and (c) responsibility for supporting victims.

Significantly, all who spoke to this point agreed that families would continue to find ways around legislation, the key method being to remove potential victims from the UK. There is already significant evidence that this is a common problem. For instance, the Chair of Hindu Nari Sangh argued that:

The difficulty is that often girls who are forced into marriage are taken away from the UK, the schools should have more stringent measures when a girl has been absent from school without permission for some length of time so more awareness raising for the schools is important as well.

Similarly, the SKY Project Coordinator stated that “The reality may well be that we have inadvertently driven the activity deeper underground, and encouraged more families to pursue it abroad.” None of the proposed legislation would mitigate the risks of victims being taken abroad. As this response above indicates, it is awareness-raising rather than legislation that is most critical in this respect.

Overall, the majority of respondents felt that the disadvantages of creating new legislation would outweigh the advantages, not least because bringing a criminal case would render reconciliation between victims and their families less likely. As one case progression officer from Luton County Court explained:

[T]here would be fewer cases as victims would prefer not to speak against their family if they thought family could risk being imprisoned. It wouldn’t surprise me if the

victim considers committing suicide as the thought of losing their family or accepting someone they don't love as being their husband could drive them to kill themselves.

Expanding on this point, one activist working in the area of violence against women argued that:

If the infrastructure is not in place to support a victim to develop in her (less often, his), autonomy in a safe and supportive environment, no amount of legislation will work in a meaningful or sustained way. Further, individuals who are fully supported to work through the issues related to FM or any other type of abuse in [a] way that does not create rifts within the communities or between the communities that they come from, those individuals are more likely to become the navigators and ambassadors for change within those communities. An individual who is seen by a community to have colluded with 'outsiders' in prosecuting their own parents will have no way back into and no leverage in helping the community to change at a grass-roots level.

This respondent raises a crucial issue: how change might best be brought about from within affected communities, rather than imposed from without. The moral, as well as practical, benefits of this approach to bringing about 'deep' changes in views to socio-cultural practices should not be dismissed.

3.6 Question 7: What would the impact of new legislation be on victims of forced marriage?

The responses to this question separated into four categories: respondents who gave a distinct 'yes' or 'no' answer, those who were 'unsure' and those who did not respond or did not address the core issue in their response (DNR). The aim of this question was to explore whether creating a specific criminal offence might prevent victims from moving on with their lives and/or achieving reconciliation with their families or, rather, whether it could provide them with a bargaining tool to negotiate with their families.

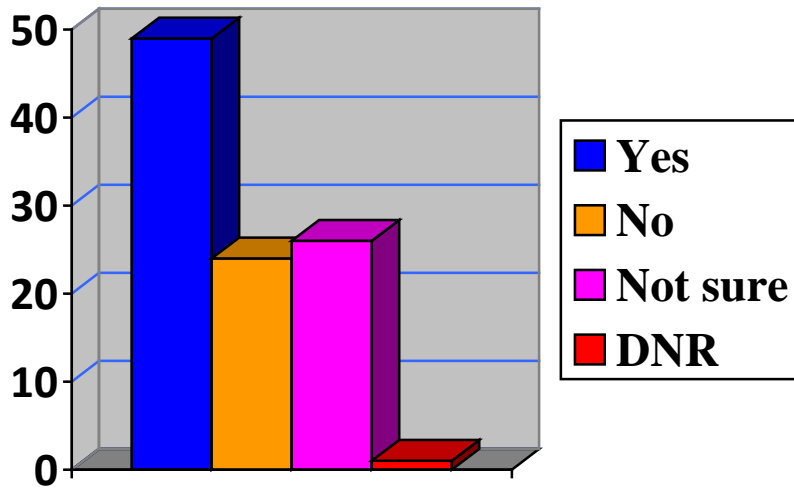


Figure 4: Responses to Question 7

Half the sample (49%) felt that the prospect of a criminal prosecution would make it harder for victims move on and/or to later be reconciled with their families: for instance, Luton All Women’s Centre replied that:

It would also make it more difficult for any level of reconciliation in the future. Many young people do not want to be forced into a marriage and will seek ways of avoiding this occurring. One of the ways is not to criminalize their families. They may not like what their families have done to them but they still want to be part of that family and not to lose all ties. Even when they have moved on, young women come back again even when they know they may still be in danger of their lives.

Similarly, one ACPO staff officer responded that:

It can often be the case in these situations that victims do not want to break all ties with their families, but simply want to be protected from being forced into marriage. A criminal prosecution against a family member would make it very difficult for the victim to have any future involvement in family life, potentially leaving that victim feeling isolated and abandoned. In addition pursuing a criminal conviction can be demanding and stressful, and some victims may feel obliged to continue with proceedings even when it is really the last thing they want to do.

Meanwhile, Savera, Liverpool, and the Muslim Council of Britain argued, respectively, that:

Victims mostly fear the prospect of family members being criminally prosecuted and in the cases we have handled it is definitely a big issue. The fear of isolation from family and community makes it a difficult choice for victims and potential victims and the only victims we have dealt with who have successfully moved on are those who are brave enough to speak out but who also hope that in the future their family

will reconcile with them - criminal prosecution would completely rule out any hope of reconciliation.

Criminal prosecution will break up the family. It will be harder for the victim to move on. The victim needs the confidence that the solution will be resolution rather than criminalisation of family members.

A complicating factor pointed out by Ashiana Sheffield is that:

Involvement in criminal prosecutions could endanger the victims by bringing them back into contact with families that are very angry with them, and could re-traumatise them and subject them to extreme emotional and psychological pressure from the other parties.

In comparison, just over a fifth of respondents (22%) were of the opposite view. For instance, a police officer from Merseyside Police Public Protection Unit stated:

The minute FAM [forced marriage] is reported or identified it becomes difficult for the victim anyway. Cultural and familial pressure will be placed on the victim, which in itself will make it difficult for the victim to move on. There is no doubt that victim involvement in the criminal justice process could result in them being ostracized from their families and communities and after[-]care and support would need to be available in every case.

This response is interesting, not only in terms of the apparent inconsistency it reveals: while the officer does not think that a specific criminal offence will complicate the issue, he also feels that any victim involvement in “criminal justice process[es]” could be problematic in terms of reconciliation. Similarly, the chair of the Social and Family Affairs Committee of the Muslim Council of Britain responded that “Victims will have difficulties in continuing to have a family life” if a criminal case is brought against family members as “Prosecution is not going to make it easy to remain in the community. Resolution has to be brought about by the community.”

These comments shed light on the deeper issue of whether the problem is more effectively tackled through civil or criminal legislation. The answer seems to be that it depends what is meant by ‘more effectively’: reconciliation is aided by civil processes, whereas if the aim is to stress to society as a whole that forced marriage is a serious offence, then criminal legislation is more likely to send the desired message. For instance, IKWRO argued that:

Criminal procedures could have an important therapeutic effect for victims. After threat of or actual forced marriage, many survivors are treated as though they are the ones who have done something wrong. They are cut off from their families and from the areas and friends they grew up with. They can be very isolated and are prone to depression. If survivors were able to get a criminal prosecution it might help them to feel vindicated and give them a sense that justice has been done. It may also help them to feel safer. The Forced Marriage Protection Order, by contrast, can make some feel as though they are in limbo.

In contrast, Eaves Housing for Women, while recognising these possible benefits, focused on the worrying fact that:

Criminal prosecutions often take a long time and for victims to be involved in criminalising their families and communities, with whom in many other ways they may have been very close, is hugely emotionally draining. Enormous emotional and possibly sometimes physical pressure will be placed on victims to persuade them to discontinue prosecutions. While a criminal prosecution may be a vindication and closure for some of the more robust of our victims these are likely those who will prosper whatever measures are available, I do have concerns that the process may significantly increase the pressure on victims and particularly for those most vulnerable, youngest, most emotionally engaged with their family who still would seem to me to be the majority.

Similar concerns are identified in the response from a police officer based at Luton Police Station:

Very often the cases are protracted due to court availability. In reality the victim comes under pressure from their own beliefs and out of loyalty to their family and community and also from external pressure. The long period of time before the case comes to court often weakens the victims [*sic*] resolve and activity and attempts by the community to resolve the issues themselves often complicate the case and compromise the complainant.

The fact that criminal proceedings involve many dangers, especially for particularly vulnerable victims, bears careful consideration. The Henna Foundation expanded on these concerns, explaining that:

Victims of Forced Marriage & HBV [honour based violence] are most often nurtured within a social framework where patriarchal traditions, gender[-]specific roles, expectations and obligations of maintaining of family 'honour' is paramount. Victims experience huge amount[s of] guilt and more often than not blame themselves believing that they should have been more patient and/or accept what their families proposed as their fate. The outcome of entering criminal proceedings may well leave a victim further vulnerable and at risk of revenge [and] to internalising guilt thus limiting their capacity to move on.

This may be why nearly a quarter of respondents (24%) were unsure whether or not legislation would have a positive impact. As the SKY Project Co-ordinator argued, the question is:

Difficult to answer, [as] the process may help to provide closure to the whole experience with a definitive conclusion. Others may be left in further emotional turmoil by being dragged through the courts, compounding any existing feelings of failing their families etc.

Many respondents in the 'unsure' group felt that other measures might well prove more valuable. For instance, one Essex Police officer suggested that "Wider use of civil legislation such as restraining orders, non-molestation orders, orders under Housing Associations and

tenancy agreements all of which do not criminalise the family but provide protection for the victim” would be more effective. However, the respondent also pointed to the importance of:

Better use of criminal legislation by training specialists within the police service and CPS to identify relevant crimes and the best ways of achieving best evidence from a difficult situation and how to protect a victim who may or may not wish to leave the situation.

This brings the argument back to the key issues of (a) fostering the likelihood of reconciliation between victims and family members and (b) allowing victims to exercise agency in choosing *not* to exercise their ‘right to exit’ but, instead, to seek a solution to their problems while remaining with their family.

3.7 Question 9: Do you think that criminalising forcing someone to marry would provide victims with more tools to negotiate with their relatives?

While 38% of respondents agreed with the statement, 46% disagreed and 12% indicated that they were not sure whether they agreed or disagreed.

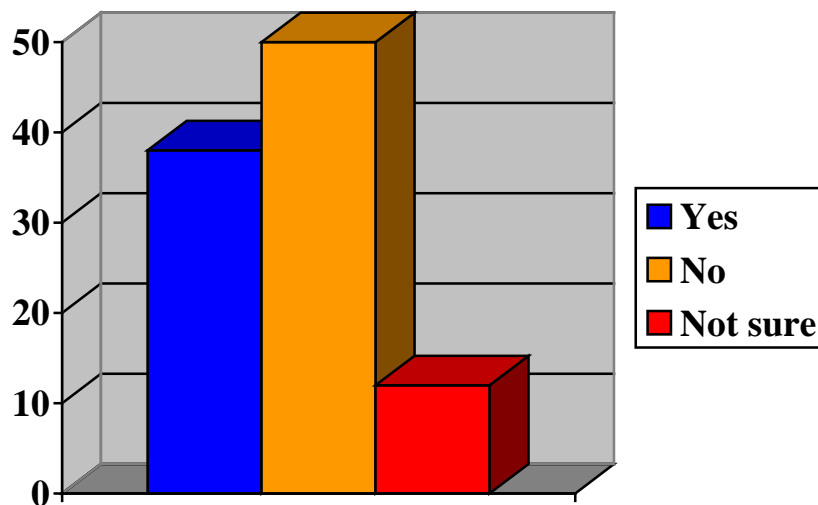


Figure 5: Responses to Question 9

The views of IKWRO, which responded in the affirmative, paralleled those of many other respondents who felt that a criminal offence would have significant benefits in relation to victims’ ability to negotiate and later reconcile with their families:

It is possible that criminalising forcing someone to marry would provide at least some victims with more tools to negotiate with their relatives. Certainly, we feel it has more value as a negotiation tool than the current system. Just as importantly, it is also

a tool which agencies such as ourselves can use to persuade communities not to force their children into marriages they do not want. We believe that getting the word out that forced marriage is now a crime will have a significant preventive effect.

Similarly, the chair of Hindu Nari Sangh responded that:

Girls can threaten their families with the fact that the family would be prosecuted if they forced her or other girls in the family to marry against their wish. However often these girls are very young and have been kept under control and may not know what the law is and how they can be helped. Again I think schools have a role to play and there should be teachers explaining to young people about forced marriage and that they can contact the police secretly or can ask the help of friends or even teachers to help them if they have suspicion[s] about their family trying to marry them forcibly or take them out of [t]his country or take their passports.

Here, the argument returns, once again, to the importance of education and awareness-raising. As with any law, a forced marriage criminal offence will only be useful if professionals and victims alike know about it and how it may be employed to their advantage.

Those who responded in the negative focused on the issue of women and girls being taken abroad for forced marriages: for instance, Eaves Housing for Women stated that:

Many people might think and assume this [i.e. that a criminal offence would offer benefits in terms of victims' ability to negotiate with their family] including the young women themselves - it seems to make sense at face value. However, I suspect that those who are able to negotiate, convince, persuade, hold their ground with their families and seek help or evasive action in whatever form would do so as they currently do irrespective of the label and those who do not feel able to stand up to their parents wouldn't as they currently don't and criminalisation wouldn't help them ... Many of their family members do not consider what they are doing as wrong, some do not care about what British law says anyway, some would package what they are doing as arranged marriage and would not accept that it was forced so they therefore wouldn't feel implicated in any offence, some would accept that forced marriage is wrong in their other culture and religion as well as in British terms but still don't describe or accept that they are doing a forced marriage I think there is also a danger that some young people might glibly think if I just confront parents with the criminal nature of a forced marriage that will solve everything whereas it may simply ratchet up tensions and urgency and cause the family to take the girl abroad earlier and for longer to prevent her accessing help which can then result in even more disruption to her education, career, economic independence, viable choices and control of her sexual and reproductive rights. However it is possible that where a parent is pressurising the child into a forced marriage in order to meet the expectations of other family members elsewhere then they may be able to benefit from highlighting the criminal nature [of forced marriage] and [so] resist their own family pressure.

This long and complex response highlights a number of issues introduced above, crucially the fact that "robust" victims will be able to make the most of both new and existing measures, whereas particularly vulnerable victims may find that criminal sanctions present

even tougher challenges to surmount. However, this response also points to a different difficulty: the fact that while criminalisation may be intended to send a powerful message, those who do not recognise that their actions constitute a criminal offence will not see that this message has any relevance to their actions. On the other hand, the response speaks to the power – touched on elsewhere – of the views of the wider community: criminalisation may offer families the power to steer away from a forced marriage desired by other members of the community. This, in substance, returns the discussion to the issue of education and awareness-raising: in this light, sending a powerful message to communities that practice forced marriage may benefit not only potential victims but also family members who might otherwise themselves be coerced into forcing a relative into a marriage. Another issue worth noting is the reference to parents believing that they are arranging, as opposed to forcing, a marriage: several respondents mention widespread conflation of these two practices – one a legitimate cultural practice and the other a violation of human rights – as one of the key misunderstandings that better education (and better training for relevant professionals) should seek to address.

Meanwhile, an officer from Luton Police Station explored the practical difficulties, arguing that criminalisation:

Would place the victim at a greater risk. Very often the FMCP[A] orders that Police have requested from the Court have been ex-parte especially if the forced marriage has not already taken place. This is not possible in the criminal courts. Very often police have to plan with victims over the timing of the servi[ng] of the orders to make sure that they have somewhere safe to go. In my opinion it would be very unsafe for the victim to be led to believe that they can use legislation as a bargaining tool in this way. With the FMCP[A] Orders in my experience we have some cases where the victims are still residing with their parents ... if forced marriage was criminalised I believe the prosecution process would not allow victims to do this.

3.8 *Question 8: Do you think that the creation of a new criminal offence would make it clearer and easier for the police, NGOs and/or public support agencies to tackle the problem?*

As many respondents argued, a stand-alone legal provision could actually make the job of the police and prosecutors more onerous as deciding whether something is criminally unacceptable behaviour is difficult in practice: this would, in many cases, be necessary in order to establish that one or both parties to a marriage had not given their free and full consent. Furthermore, the offence would be difficult to prove because of the numbers of people who could be involved in putting pressure on the victim. Moreover, the lack of clear definitions – of forced marriage, coercion and other relevant terms – could prejudice the fairness of any legislation. These problems would likely mean that most cases would involve long and complex legal proceedings.

Another common objection to specific legislation is that it would criminalise large numbers of people and put pressure on the police to intervene whenever there was the slightest doubt about the consent of one or both parties to a marriage. Furthermore, a specific law would criminalise emotional and psychological pressure, taking them below the current legal threshold and setting a new precedent. Some respondents were also concerned about how the

new offence would affect Article 8 of the Convention Rights of the European Convention on Human Rights: the right to respect for private and family life.

Judge Pearce's response touches eloquently on many of these concerns:

To create a new offence does not automatically have a deterrent effect. If a person is charged the charge has to be proved to the satisfaction of the court/jury on sufficient and credible evidence on the criminal standard of proof. It is more than likely that these cases will be hotly contested. It will entail a long and drawn out process in which the PTBP in most cases will be a key witness and like all witnesses subject to cross examination in a public arena. Unlike incidents of DV [domestic violence] in FM [forced marriage] cases the perpetrator is not a single individual. It often involves the wider extended family in one degree or another and sometimes also includes family[,] friends and others from the community. Is it proposed that in such an instance (and this is not uncommon) everyone will be charged with the offence? It is difficult enough for trained professionals to distinguish between an arranged marriage and a forced marriage why then is it believed that the jury who may have no real concept of what is involved be expected to understand all the complex family cultural religious and other dynamics. Has anyone considered the cost of expert evidence in almost all cases?

Once again, many respondents suggested that preventative measures would be more appropriate and useful. These could include publicity campaigns to raise awareness of existing criminal offences and their links to forced marriage, and also to raise awareness of the fact that forced marriage is a violation of human rights and not to be tolerated. Indeed, over 60% of respondents again mentioned the importance of providing more funding for refuges and/or the need for increased education and awareness-raising, picking up on earlier comments made in relation to Question 6.

3.9 Question 4: *If not, what suggestions would you make to encourage better use of existing law?*¹⁵

The two main suggestions that respondents put forward either to complement new legislation or as an alternative to as specific offence were, as seen earlier in relation to responses to Question 6, education/ awareness-raising programmes and better support for victims.

Respondents stressed the fact that education needs to reach all strata of society – individuals, affected communities and the general public – but a particular concern was that young people needed to be educated in order to be better able to resist a forced marriage. Furthermore, many respondents stressed the fact that addressing the issue long-term requires changing the attitudes of the younger generation. However, dialogue with the older generations of affected communities is also important.

In terms of the nature of education programmes, respondents generally agreed that not only should young people be made aware of the government's position on forced marriage, but they should also be informed about their rights and the services and organisations that can provide help and support. Several respondents also identified the importance of young people

¹⁵ See Appendix C for additional quotations from responses to Question 4

(as well as relevant professionals) being taught the difference between an arranged marriage and a forced marriage. The young people of communities where these practices are prevalent also need to be made aware that no religion condones the practice of forced marriage and that it does not feature in either the Qur'an or the Bible. To this end, respondents suggested that youth groups, community sessions, parent and toddler groups and schools could all help to educate children about forced marriage and related issues. Within the school context, another suggestion focused on the possibility of establishing a system of welfare interviews with vulnerable pupils to discuss forced marriage and to make them aware of the support mechanisms available. A number of respondents even suggested that forced marriage could be part of the compulsory school curriculum. It was commonly agreed that forums where forced marriage is openly discussed, especially those that involve community and religious leaders, are key to the success of community-education programmes.

Respondents also strongly supported vigorous media and police campaigns, at both the local and national levels, to (a) publicise the Government's stance on forced marriage, (b) highlight the criminal nature of forced marriage, and (c) provide information about which existing criminal laws it can be tackled under. Some respondents felt that forced marriage should be publicised within the remit of human rights issues, while others suggested that the severity of punishments should be highlighted. However, most were keen to note the need for sensitivity as stereotyping could alienate communities and, thus, make tackling the problem even more difficult. In terms of the details of how the issue should be publicised, respondents identified posters (including in toilets), TV and radio advertisements (particularly on South Asian channels), newspaper stories, TV documentaries and storylines in a popular soaps as useful.

Furthermore, respondents collectively agreed that legislation alone was not sufficient to address the problem, not least because it is vital that strong support mechanisms are put in place to help victims, who need to have access to a broad range of support services: these should include emergency and long-term housing, education grants, financial assistance, confidence-building courses, and advice (both legal and non-legal). For this to happen, statutory, community and voluntary organisations must develop more effective ways of working together, especially as regards referral procedures and information-sharing. Adequate funding and resources must also be available to all the relevant organisations to enable effective collaboration to take place.

Respondents also advocated (a) the setting up of help-lines, (b) initiatives to encourage victims to speak to people who had survived and moved past their own experiences of forced marriage, and (c) programmes offering family therapy and family mediation. Respondents stressed that these services must be effectively publicised if they are to help those most in need: here, the links between education/ awareness-raising and support services are clearly visible.

Respondents also suggested that information, translated into a range of languages, should be available in places such as schools, GP surgeries, community centres, supermarkets, places of worship, and airports and travel agencies (to address the needs of victims who are being taken abroad). Furthermore, the staff running these places (including social workers, youth team leaders, teachers, religious leaders, community workers and GPs) should be alerted be given appropriate training. This, again, will depend on sensitive engagement with relevant communities, not only in order to set up these programmes, but in order to gather knowledge to establish best practice. For instance, affected communities can provide a wealth of

knowledge about the warning signs of forced marriage and how best to handle the situation, not least in terms of enabling victims to reconcile with their families if they want to do so (and the majority do).

3.10 Question 5: Would the potential of few prosecutions devalue the introduction of a specific offence?

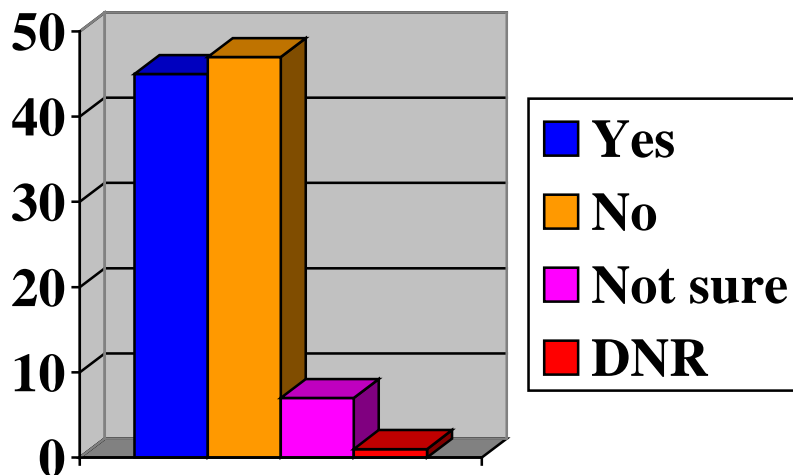


Figure 6: Responses to Question 5

While 45% of respondents raised concerns about the possibility that few prosecutions would be brought under the new law, resulting in it lacking ‘teeth’, 47% felt that this would not be a problem. On the one hand, Luton All Women’s Centre argued that:

If we take the example of female genital mutilation – although it is a criminal offence to carry out this procedure there has not yet been a single prosecution. People may lose faith in the system and feel there is not much point in taking this forward. The lack of cases that go through to prosecution and sentencing and the size of the sentence also impacts negatively on issues like rape. So forced marriage in this instance would not be too dissimilar.

As the respondent argues, the legislation criminalising female genital mutilation has led to only a handful of prosecutions, despite the continuing rise in the numbers of cases in the UK. Indeed, criminalising female genital mutilation has proven a largely symbolic gesture: moreover, many have criticised these measures as racist in that they can be seen as aimed at regulating the behaviour and/or cultural practices of social groups with little political or economic power, including refugees and recent immigrants. The fact that British campaigns to eradicate female genital mutilation have, therefore, been seen as culturally imperialistic has meant that criminalisation has been perceived as focused on punishment rather than prevention: a criticism that has not been levelled at the FMCPA.

Returning to the issue of whether the risk of few forced marriage prosecutions would mean that the proposed law would lack ‘teeth’, the Caerphilly Domestic Abuse Coordinator echoed the statement from Luton All Women’s Centre:

One of the functions of the introduction of a specific offence would be to raise the issue in the minds of the public and highlight the potential legal consequence[s] if you force someone to marry against their will. However if the law was never used then the message would become significantly undermined.

In comparison, Vera Baird, former Minister for Policy Creation and Development, argued that this concern is not a good reason to fail to introduce a specific offence as “there have been prosecutions using other offences which have succeeded and have sent out a message, notwithstanding that such prosecutions are rare.” Similarly, Eaves Housing for Women replied that “the number of prosecutions is [not] relevant to whether legislation should or should not be introduced. There are other factors such as providing a deterrent, and having a legal framework that encourages a civilised and progressive society.” The respondent went on to explore the complexities of the issue, arguing that:

Very few prosecutions might send a strong message - however several attempted and failed or discontinued prosecutions/convictions would be rather a negative step. However a greater concern might be that if a criminal offence is introduced and many victims still choose not to go through with the prosecution then it could cause [the] public sector to think that the victim clearly doesn’t mind that much or to doubt if it was really forced because they haven’t taken advantage of the criminal law. It could also be damaging in that the way that data is collected and used may result in suggesting there has been a reduction or [that] there are false claims just because the victim has not chosen to use criminal prosecution.

As seen in relation to several other questions, there are both significant pros and cons to introducing specific legislation. Only further research will illuminate which of these exert a more powerful effect in the majority of cases. As Vera Baird, former Minister for Policy Creation and Development, stated, it is necessary to “see what monitoring and research shows the current law has achieved and whether those on the ground, who were sure that it should not be a crime, have changed their minds.”

3.11 Criminal justice interventions and forced marriage

A significant number of respondents argued that monitoring was necessary in relation to (a) service providers’ application of current forced marriage guidelines, (b) policy implementation, and (c) accountability. In the main, respondents suggested that gaps in criminal law were not the main problem but rather that failures to implement the current provisions and impose sanctions on perpetrators constituted a *de facto* climate of impunity: laws and policies are only effective as deterrents if they are enforced. While the 2007 Forced Marriage (Civil Protection) Act is an important instrument for social change, the Roehampton University study revealed that its weakness – and, indeed, the likely weakness recognised by many in *favour* of new legislation – of a standard alone criminal offence is that remedies and

laws depend on the robustness of the legal system within which they operate: their effectiveness depends on the individuals who implement and enforce them.

Deterrent measures often fail due to a lack of commitment to enforcing practical (as opposed to policy) compliance, underpinned by a concurrent failure to stress the need for awareness-raising regarding why a moral commitment to eradicating forced marriage is important not just in relation to the practice itself but to working towards gender equality. The development and adoption of responsive regulation (i.e. legislative regulation that individuals agree with from a moral perspective), on the other hand, would, in itself, move individuals towards compliance with the law. However, as seen in the Roehampton University study, there is significant division among stakeholders as to what measures are likely to prove effective. This is mainly because different stakeholders have different concerns. For instance, while NGOs are focused on how to bring victims through forced marriage with the least amount of lasting damage, police officers are often more concerned with preventing future cases. Thus, NGOs often prize reconciliation between victims and their families over deterrent effects and the 'message' sent by harsher punishments.

However, the key to attempting to develop at least *more* responsive regulations is to explore how to encourage acceptance, in affected communities, that forced marriage is wrong: for this to happen, these communities must perceive that policies meet the needs of the community and that they are fair, since the perception of fairness plays a major role in acceptance and compliance with set policies (Winter *et al.*, 2009). The involvement of religious and community leaders who have a genuine vested interest in women's rights was identified by many respondents as key in terms of setting up effective awareness-raising and educational initiatives, and working to motivate affected communities to follow existing laws.

Another interesting option in terms of new legislation is to introduce a statutory duty on health professionals, social service authorities, and criminal justice agencies to report forced marriage cases: this duty would need to be backed up with penalties or at least a legal recognition of responsibility in case of non-compliance. This measure would need to be supported by better mechanisms for recording case details, as well as better protocols concerning early detection and prevention. Moreover, these protocols would need to be culturally sensitive: a point picked up on by many of the respondents in the Roehampton study. To be effective, enhanced reporting procedures will also need to be both national and accompanied by better education and awareness-raising programmes for professionals including teachers, medical staff, the police and social service providers who come into contact with young people: without this training, these professionals will continue to fail to identify cases of forced marriage, making the advances in reporting and recording procedures meaningless.

Indeed, the 2008 World Health Organisation report on female genital mutilation found that multi-faceted, holistic approaches are most effective in encouraging communities to abandon practices that infringe on human rights. In relation to forced marriage, approaches that use bottom-up, community-based, grassroots efforts have proven effective in preventing harmful social practices that undermine gender equality and women's and girls' rights. Moreover the evidence from the survey suggests that enforcements strategies that utilise persuasion and provide assistance to affected communities are often less costly and less intrusive than coercive sanctions.

In this regard, it is worth returning to the fact that the UK's punitive, top-down approach to the related issue of female genital mutilation has proven demonstrably unsuccessful. Legal deterrents alone do not address the cultural dilemmas that Kurdish, Roma traveller and South Asian communities, in particular, face in relation to issues of long-standing socio-cultural practices that may be at odds with mainstream British 'traditions' as represented in British law. The policymakers who enact legislation aimed at eradicating forced marriage need to be involved in communicating information about the law to communities in which the practice of forced marriage is prevalent: the legislation will have a preventive effect only if these communities are informed about the penalties and punishments that may be imposed on people who violate the legislation. Moreover, a lack of understanding about both basic human rights and women's rights helps to perpetuate the types of patriarchal socio-cultural values and norms that underpin the practice of forced marriage: here, again, education can pave the way for the creation of the conditions under which affected communities are most likely to accept that forced marriage is morally and legally unacceptable. Thus, education, policy and support for victims must be brought together in measures that seek to provide a long-term solution.

4. Conclusion

In the short-term, more research is needed both into forced marriage in general and, more specifically, into the impact of the statutory guidelines introduced in 2007 as well as the FMCPA. Moreover, as the Roehampton University study demonstrated, there is a widespread lack of understanding about existing legislation and how it should be applied, not least because many relevant professionals, including social workers and law enforcements officers, currently lack adequate of knowledge of what comprises a forced marriage (including how it differs from arranged marriage). This has inhibited the effective use of current civil and criminal remedies to combat the causes and consequences of forced marriage: a problem underpinned by the lack of monitoring of statutory guidelines and policy implementation.

In designing education and awareness-raising programmes, it is important to recognise that information alone is not sufficient to bring about changes in attitudes to forced marriage: innovative means of communicating the harms that result from forced marriage, both from a human rights perspective and a legal one, could be developed by investing in specialist outreach services. Engaging directly with grassroots violence against women groups and community organisations to support victims may be more successful and also better received by affected communities. Changing cultural traditions concerning the practice of forced marriage by framing it as gender-based violence and discrimination against women and girls will require affected communities to engage with these notions: to encourage this advance, affected communities could be invited to help develop more culturally sensitive ways of disseminating information about the laws concerning forced marriage and other forms of gender-based violence, and also about the types of support available to victims and potential victims.

Ultimately, the prosecution of perpetrators and protection of victims is largely dependent on victims, often children, young people and vulnerable adults, disclosing the abuse and/or coercion they have suffered. If no one reports those who violate these laws, then the practice of forced marriage will persist: as such, it is vital that relevant professionals receive training

to allow them to identify cases/ potential cases of forced marriage. It is also crucial not only that protection is afforded to those reporting issues to the authorities, but that people *know* that protection is available. Those recording reports of forced marriage also need suitable training to ensure that victims, in particular, are not intimidated by the process, and also that they are not misunderstood or placed in danger of further harm. Often the police and other relevant authorities do not fully grasp the extent of the potential backlash, not only from the victim's family but the wider community, of rejecting a marriage that is deemed suitable and appropriate even if it is against the individual's wishes: when the reinforcement of kinship networks and/or immigration are involved, this backlash may be deadly, so the professionals dealing directly with victims need to have a strong understanding of these complicating factors. Finally, the measures in place to deal with forced marriage can, in themselves, encourage or discourage reporting: for many victims, it is crucial that seeking help does not prevent future reconciliation with their families, especially their parents. In this regard, criminalisation may actively discourage many victims and potential victims from speaking out about the abuse and/or coercion they are facing.

Overall there does not seem to be an appetite for specific legislation. However, as the SKY Project Coordinator argued, "it may be politically tempting to use this fact [the creation of a new offence] to declare that the criminalisation of FM has successfully tackled the problem." This may be why the debate has returned again and again to criminalisation, rather than any of the other issues identified by respondents as key to tackling the problem long-term, including better support services for victims, enhanced training for relevant professionals, and broader educational and awareness-raising programmes for affected communities. Many respondents view the possibility of criminalisation as a method that can be touted as addressing race and gender issues relating to violence against women in black and minority ethnic communities, whereas the less visible route of investing in prevention, protection of victims, and the provision of support services may well offer better results.

Appendix A: Roehampton University study – survey questions

1. Kindly provide organisation details and number of forced marriage cases you have dealt with between January 2010 - January 2011.
2. Do you think victims and potential victims would be less likely to seek help if forcing someone to marry became a specific criminal offence?
3. Do you think there are already sufficient criminal offences and protective measures? Are they being used to full effect?
4. If not, what suggestions would you make to encourage better use of existing law?
5. Would the potential of few prosecutions devalue the introduction of a specific offence?
6. Would the effort of creating a new offence be justified? Might the resources be better used on other violence against women work?
7. Would any increased involvement in criminal prosecution make it harder for victims to move on?
8. Do you think that the creation of a new criminal offence would make it clearer and easier for the police, NGOs and/or public support agencies to tackle the problem?
9. Do you think that criminalising forcing someone to marry would provide victims with more tools to negotiate with their relatives?
10. On balance, should the Coalition Government introduce a specific criminal offence for forced marriage? Explain why.

Appendix B: List of respondents

1. Mandy Sanghera
2. Justine Eardley-Dunn Savana (Rape Crisis)
3. Gill Moglione Savera, Liverpool
4. Dr Farook Sarfraz, SKY
5. Afrah Qassim, Community Development Worker, Liverpool
6. Mussurut Zia, Practical Solutions
7. Annette Lawson, NAWO
8. South Essex Rape and Incest Crisis Centre
9. Motiur Rahman, Ijma Media
10. Margaret Smith, IDSVA Service Manager
11. Cathy Roberts, Rape and Sexual Assault
12. Pc N Sidhu, Thames Valley Police, Windsor Police Station
13. Jennette Evans, London Borough of Camden
14. Christopher Sephton, Merseyside Police Public Protection Unit
15. Malik Rahman, Shahjalal Mosque and Islamic Centre, Southampton
16. Vera Baird, former Minister, Policy Creation and Development
17. Marie O'Rourke, ACCM (UK)
18. Sarita Jain, Luton All Women's Centre
19. Southampton Police, Hampshire Constabulary
20. Lynne Townley, Save Your Rights
21. Andrea Davies, Domestic Abuse Coordinator - Caerphilly, Wales
22. Dc John Kerr, Merseyside Police
23. Christine Elmitt, Wrexham County Borough Council
24. Kelly Mitchell, Gwynedd Domestic Abuse & Sexual Violence Co-ordinator
25. Bal Kaur Howard, Suffolk Police
26. Dr Reefat K Drabu, Social and Family Affairs Committee The Muslim Council of Britain
27. Pommy Harmar, Next Link Domestic Abuse Services
28. Amerdep Somal, Independent Police Complaints Commission
29. Sara Hossain, Honorary Director Bangladesh Legal Aid and Services Trust
30. Shashi Gupta, Savera
31. Eaves Housing for Women
32. Lila Begum, Bedfordshire Race Equality Council
33. Angela Clarke, South Liverpool Domestic Abuse Services
34. Thangam Debbonaire, Respect
35. Fionnuala Murphy, IKWRO
36. Sally Elliot, European Union of Women
37. Bristol County Court
38. Practical Solutions

39. Josephine Barrett, EUW
40. Janet McDermott, Ashiana Sheffield, Black Women's Refuge
41. Elaine McLaughlin, Hemat Gryffe Women's Aid in Glasgow
42. Northumbria Health Care Foundation NHS Trust North Tyneside District General Hospital
43. Nicola Burston, Essex Police
44. Celia Capstick National Board of Catholic Women
45. Thelma Clark
46. Gloria Proops, Member of AJWO
47. Annette Lawson, NAWO
48. Simon Kers, Domestic Abuse Partnership Manager, Cambridgeshire County Council
49. Alison Ritchie, Bedford Borough Council
50. Bridget Penhale, University of East Anglia Norwich
51. E Howard
52. Denise Clark, South Tyneside Public Protection Unit, Northumbria Police
53. Mrs Hilary Sillars, Ex- President National Council of Women, GB
54. Dr Shobha Srivastava, Chair Hindu Nari Sangh
55. Davina James-Hanman, AVA (Against Violence & Abuse)
56. Ben Smith, Staff Officer to ACPO Programme lead for Honour Based Violence, Forced Marriage & Female Genital
57. Hannana Siddiqui, Southall Black Sisters
58. Gill Carr, Forbes Solicitors
59. Manchester IDVA Service
60. Gita Patel
61. WPC 871 Michele Webb, 'Honour' based abuse/Forced marriage Unit, Luton Police Station
62. Shigufta Khan / Sumaya Bux, Wish Centre, Blackburn
63. Natalie Wilson, The Haven
64. Cris McCurley, Family Lawyer, Member of the BME DV Network
65. Jill Saward, Sawardstone Media
66. Miss Sajda Mughal, JAN Trust
67. Brinder Seni, Director & Founder of Community Culture Network
68. Judge Nazreen Pearce
69. HH Judge Sir Gavyn Arthur, DFJ for Bedfordshire (Luton and Bedford)
70. Shahien Taj, Henna Foundation
71. Shahnaz Khanam, Luton County Court
72. Imkaan
73. Philip Balmforth, Police Officer, Bradford
74. Heather Harvey, Lilith Research and Development Manager, Eaves Housing

Appendix C: Additional quotations from responses to the Roehampton University survey

Responses to Question 3

There are sufficient criminal offences and protective measure[s] already around the issue of forced marriage which can be used; however they need to be used more effectively and efficiently.

(Luton All Women's Centre)

I believe the current system does work extremely well, thanks to the alert police, schools, local authorities etc.

(Judge Arthur)

I don't think there are sufficient criminal offences and protective measures, there is no specific offence forcing someone to get married other than the protection under the Forced Marriage Protection Act.

(Lawyer, Forbes Solicitors)

No. I believe that victims often only approach the police at the time of crisis anyway and I do not think the introduction of a specific offence would stop them from doing this. I also believe that offenders should know that FAM [forced marriage] is morally, ethically and criminally wrong and by creating a specific offence I think this would send out a powerful message.

(Merseyside Police Public Protection Unit)

Responses to Question 4

No. In my view this is a hugely significant issue and one that UK law enforcement agencies are only just beginning to understand. It could be that more and more offences are reported in the future as awareness of FAM increases. Legislation should exist to reflect the serious nature of this crime and to aid the investigative process.

(Police, Officer, Merseyside Police Public Protection Unit)

Responses to Question 6

Due to family pressure and cultural beliefs many victims withdraw, they should be given assurances that they could have an identity change and change of place so they should not fear repercussions.

(Chair, Hindu Nari Sangh)

I would like to see strengthened powers around duties to protect. There are gaps in statutory duties between housing, health and social care services that could leave people vulnerable.

(Bedford Borough Council)

Resources might better be used by improving the use of current legislation to protect victims of FM. The most important thing for me is that victims know where they can get help when needed and that it is provided to them in all cases.

(Domestic Abuse Coordinator, Caerphilly, Wales)

Need to improve response of the police- implementation and enforcement of statutory and practice forced marriage guidelines- inspectorates should be more proactive.

(Southall Black Sisters)

Increasing general awareness among communities that are disproportionately affected by forced marriage, and providing clear pathways for practitioners and victims around what the specific offences are with relevance to forced marriage, and the routes to accessing justice [are also key].

(Imkaan)

Resources are not usually in one pot for one arena and readily redistributed from one concern within the same arena to another. VAWG [violence against women and girls] should be seen as one entity although it is being (has been) unpicked by the present government but IF one could distribute a total pot, then not to another part of VAWG necessarily but to focus on implementation of existing law and cultural changes re [sic] forced marriages better than spending on a new act.

(NAWO)

Sometimes it would [i.e. sometimes the impact of criminalisation would be positive], but victims may feel more confident to use the existing laws if police, courts and domestic violence specialists (including our own members) are better equipped to understand their situations and use existing laws appropriately.

(Respect)

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