



## **FORCED MARRIAGE: CIVIL REMEDIES**

Engender is a membership organisation working on an anti-sexist agenda in Scotland and Europe to increase women's power and influence and make visible the impact of sexism on women, men and society. We provide a wide range of information and support to individuals, organisations and institutions who seek to achieve equality and justice.

Engender welcomes the opportunity to respond to this consultation Forced Marriage: Civil Remedies and supports the move to do more to help those affected by forced marriage in Scotland and to ensure that forced marriage is recognised as a violation of internationally recognised human rights and a form of violence against women.

### **1. Are there any difficulties in accessing existing civil remedies for forced marriage cases?**

**YES**

#### **(1a) what access difficulties exist AND why do you think these difficulties exist?**

Engender is aware that there are a number of difficulties in accessing existing civil remedies for forced marriages. Many people in the community are unaware of the civil law remedies available, or even of the difference between civil and criminal law. They are frequently unaware of any remedies or how to access them, so publicity is needed on both existing civil laws and any new legislation that will be implemented.

Currently in Scotland, solicitors have to trawl through a range of legal remedies and provisions to assist victims of forced marriage. Therefore, despite there being several different measures to protect victims of forced marriage as described in the consultation document, there isn't one single easy to apply and easy to understand law for solicitors to use and for victims to understand that can prevent, protect and remedy forced marriage.

The current civil remedies that exist to protect victims of forced marriage are also too generalised and don't specifically deal with the issue. This means professionals not familiar with dealing with forced marriage cases may not use existing civil remedies appropriately and would find it difficult to present evidence to justify the use of existing civil protection remedies.

The primary difficulty is the lack of awareness and understanding within professionals in the statutory and voluntary sector of the problem of forced marriages i.e. their nature, extent, victims they affect: mostly young women and young girls, and the role of the extended family, faith and culture in perpetuating these marriages.

This lack of understanding amongst professionals makes it difficult for victims to seek effective legal recourse for their situation and subsequently use civil remedies that can prevent and protect them from forced marriages. If victims do seek legal assistance there is also a danger that they may not fully understand the various legal remedies available to them and the consequences of using such remedies on perpetrators.

There are physical, emotional and institutional barriers for victims of forced marriage to disclose abuse and access help. Abusers are almost always family members which makes it emotionally and physically difficult for victims to seek assistance.

The legal system has not currently got the structures in place to facilitate easier access for victims and there is the problem of accessing timely funding from the legal aid board where time is taken to make a decision on how to respond to a forced marriage case in the absence of a named law and guidelines on forced marriage.

**2. Once accessed are there any difficulties in using existing civil remedies in forced marriage cases?**

**YES**

**(2a) what difficulties exist AND why do you think these difficulties exist?**

Engender believes that existing civil remedies are not robust enough to deal with cases of forced marriage and because there is no specific order to obtain protection against a forced marriage, prior to it happening, declaring a marriage void after it has taken place is simply not adequate. The focus should be on prevention and protection rather than punishment after the fact. An interdict prohibits unlawful behaviour, but the existing civil laws do not take into account the role of extended family and community members in coercing victims into forced marriage.

Many victims of forced marriages may find themselves in further danger for having accessed legal help and may need additional support and protection including easy access to refuge space, police protection etc and in case of a minor the involvement of social work. In the absence of specific guidelines on dealing with forced marriage cases civil remedies can prove ineffective and will not protect victims.

Engender agrees with Women's Aid that Forced Marriage is a form of domestic abuse and should be recognised as such. This means that victims should have the same kind of protection and services as victims of domestic abuse. Civil remedies alone are not sufficient; services should also be made available to assist victims in a timely manner. We are also aware that although women are affected most by forced marriage this is a problem that affects men as well and it is an issue that there are no services for men fleeing forced marriage.

**3. All the civil remedies currently available in Scotland must be sought directly by the victim, whereas English and Wales legislation allows third parties to apply for orders on the victim's behalf. Do you think allowing third party involvement is a good idea?**

**YES**

**(3a) if YES, why do you think allowing third party involvement is a good idea?**

It must be recognised that victims of forced marriage are often too emotionally involved in the situation, especially if they are younger and don't feel brave enough to access protection. They may lack confidence and fear the consequences of reporting their family members. Many victims are unable to directly seek legal help and we believe that third party involvement would empower victims and give them support. It would also prevent younger people from being exploited by family members, if they have outside help.

Engender holds that Scotland should follow the England and Wales lead on legislation on who can be a third party. The court should consider the relationship of the third party to the victim in order to avoid negative consequences including their further disempowerment.

It is vital that all third parties should be competent in understanding forced marriage and should be able to consider the needs and wants of the victims objectively. Individuals who apply as third parties should be afforded full support from the courts and relevant support agencies to ensure the safety of the victim. It is also important that training is undertaken for teachers, social workers etc to ensure there is a proper understanding of forced marriage, as currently there is much misinformation. If in ignorance, professionals misunderstand a situation and take out a third party order, real damage can be done to the young person, to the family, and to community relations as a whole.

Engender believes that third party applications made by local authorities and other statutory agencies should be directed by a trained and named person to ensure an appropriate response, ideally consulting with BME agencies such as Amina Muslim Women's Centre, Shakti or Hemat Gryffe, rather than an open referral system.

We are also in agreement with Women's Aid that there would need to be some clear guidance on how costs to raise legal action will be met: Underfunded organisations do not have the resources to bear the legal costs and must be able to get Legal Aid.

We do feel that while third party interventions can be beneficial this needs to be used carefully. There needs to be more information about what agencies will be involved and what will be the rules of conduct and conditions they must fulfill in order to qualify as a third party. Shakti Women's Aid has suggested that this aspect of the law should be phased in and Engender agrees that this would be sensible since there is a need for more awareness raising and competence development within the statutory and voluntary sectors (i.e. potential third parties).

**4. In Scotland, interdicts, and non-harassment orders can only be used to prohibit specific actions. Do you think the law should be able to positively require a person to do something?**

**YES**

**(4a) if YES, with reference to examples, why do you think the law should positively require a person to do something?**

Engender supports the forced marriage civil protection act as a welcome preventative act with the aim of preventing the forced marriage of women, children (and men). We hold that preventing something from happening is preferable to having to remedy it later. If the law positively requires a person to do something, it may help to stop or change the perpetrator's behaviour.

*In Shakti Women's Aid's experience most forced marriage cases have an overseas element to them and the most common modus operandi is to force young women and children into marriages overseas by forcing them to travel abroad on false pretexts. Current civil remedies such as the ones mentioned in the question can prohibit named individuals from taking young children, women (and men) overseas for marriage but don't necessarily remove the means of doing so as these remedies don't ask for passports and dual nationality documents to be handed over.*

Many families feel that they are acting in the best long-term interests of their child and are unaware that they are breaking the law or abusing their responsibilities. Sometimes people are unaware of the real consequences of their actions; in this sense implementing legal procedures will be positive. All legislation should incorporate positive and negative aspects with reference to what people can and cannot do e.g. a code of conduct.

**5. The UK Forced Marriage (Civil Protection) Act allows orders to be directed against anyone aiding, abetting, encouraging or conspiring with the principal perpetrator, should this be introduced in Scotland?**

**YES**

**(5a) If YES - if introduced, what do you think the benefits would be?**

As previously stated, Engender holds that forced marriage is a form of domestic abuse. It is often perpetrated by immediate and or extended family and it is very rare that there is only one perpetrator. Although the process may be lead by a principal perpetrator there is often a network of individuals who would aid, abet, encourage and conspire with this principal perpetrator to ensure that a young woman/child (or man) is forced into marriage.

We are also aware that the apparent perpetrator may be a victim of abuse and pressure as well as the person who is being forced into marriage. The perpetrator may be under enormous pressure from other members of their family/relatives and the desire to 'please them' due to loyalty or for fear of reprisals may take precedence over their own child's opinions and feelings.

The order will work to deter other people from assisting/pressurising the main perpetrator and they in turn would be more isolated and be more responsible for their actions. It will discourage abusive behaviour and will make people more aware of their actions and the impact on friends and family. Not only the perpetrators but others will have fear of being arrested, they will then understand that it is illegal to force someone into a marriage.

The forced marriage civil protection act sends a very clear message to communities and individuals who wish to perpetrate forced marriage, that what they are doing is wrong and that there is no excuse for it. Therefore, the order must hold all individuals involved in forcing a victim into marriage responsible.

**6. The UK Forced Marriage (Civil Protection) Act allows a power of arrest attached to an order to be used against anyone who seems to be breaching the terms of the order not just the person against whom the order is primarily directed. Should this be introduced in Scotland?**

**YES**

**(6a) if yes, what do you think the benefits will be?**

This will provide greater protection for the victim and is necessary to make the orders effective.

It would discourage wider family and third party involvement as there would be a risk of being arrested and perpetrators will be less likely to commit acts due to the consequences and fear of arrest.

Since forced marriages primarily occur within BME communities, it must be recognised from the outset that the risk of significant harm to victims from these communities can be quite high and that any activity on part of the victim seen to bring shame upon or to dishonour herself and her family can put her life at risk. The judiciary must be aware of these risks and be willing to enforce the power of arrest, if the victim is willing, at even the slightest breach of order.

**7. Following on from Question 6, do you think a power of arrest should be used against someone who may be unaware of the existence of such an order or its contents?**

**YES**

**(7a) if yes, why do you think a power of arrest should be used?**

Engender takes the stance that ignorance of the law is not a defence since the perpetrators are still committing a crime and their actions are still affecting someone's well being. However, we are aware that there may be instances where sufficient evidence exists that individuals have participated in the arrangement of the marriage because they themselves have been lied to or force has been used to ensure their compliance. The power of arrest should only be used as a last resort when all other measures have failed.

*Service users of Shakti Women's Aid felt that this must be extended to those officiating on a marriage as they would have failed in their legal and divine responsibility to ensure that the marriage has been conducted with the free and full consent of both parties.*

**8. Where no power of arrest is initially attached to an order, the UK Forced Marriage (Civil Protection) Act allows the person protected by the order to apply to the court for an arrest warrant if they believe the order has been breached. Should this be introduced in Scotland?**

**YES**

**(8a) if YES - if introduced, what do you think the benefits would be?**

Perpetrators of forced marriage are generally close relatives of the victims with whom they share close emotional ties. Therefore this option is a useful additional measure, if the victim feels that a warning will be insufficient.

Without a power of arrest attached to the order, there are no consequences for the perpetrator whereas, if the power of arrest exists, it would force people to observe the order and take it more seriously. It also provides protection for the victim giving them the freedom and choice to pursue this at a later date, if they are initially unsure. The victim should use the power of arrest in extreme cases where there is a record/history of abuse, physical or threats or if the pressure is not withdrawn.

The court should recognise the particular cultural and emotional barriers that the victim would have gone through before deciding to get a power of arrest for an order and would make it a fairly straightforward process for this to be granted.

**9. On balance, in related to forced marriage, do you think existing civil remedies are sufficient?**

**NO**

**(9b) If NO, why do you think existing civil remedies are not sufficient?**

None of the civil remedies that currently exist in Scotland specifically address forced marriage. There is no real power to prevent or punish perpetrators of forced marriage; and there is not enough protection for victims. The impact of the forced marriage civil protection act will be far greater than its legislative role and we believe that it will act as a deterrent and may by its existence prevent many people from being forced into marriages.

The act will force the statutory and voluntary sector in Scotland to take note of the existence of Forced marriage in Scotland and take appropriate actions within their own organisations to tackle the problem. The existence of a specific law on forced marriage should also bring with it as in England, Wales and Northern Ireland statutory guidelines on working with victims of forced marriage.

At Engender we aware that some victims may run away to England as a safety measure and we believe that Scotland should have the same legislation to ensure that they are protected here.

We are in agreement with Amina Muslim Women's Resource Centre that it should be part of the government's remit to make sure that information about the legislation is disseminated and publicised throughout those communities where forced marriage is more likely to occur as this would both discourage negative pressure and promote positive behaviour. There is a need for a strong message to the community that forced marriages are wrong and not to be tolerated.

**10. Do you think the Scottish Government should introduce specific civil remedies in relation to forced marriage?**

**YES**

**(10a) if yes, why do you think the Scottish Government should introduce specific civil remedies?**

Specific civil remedies in relation to forced marriage should be introduced by the Scottish Government for the sake of compatibility with similar laws in England, Wales and Northern Ireland. We are well aware of the campaigning work carried out by Southall Black Sisters and other BME women's groups in England and Wales towards the Forced Marriage Civil Protection Act 2007. In terms of equality and human rights, victims from other parts of the UK must be confident of receiving similar legal protection if they move or are moved to Scotland.

**11. Another feature of the Act 2007 is that it provides for the UK government to issue statutory guidance to all agencies dealing with forced marriage issues, do you think there is a need for this in Scotland.**

**YES**

**11a) if YES, why do you think there is a need for this in Scotland?**

It is our opinion at Engender that guidelines for working with victims of forced marriage and dealing with forced marriage issues have long been overdue in Scotland. We believe there is a need for these to ensure that victims receive the appropriate support and assistance.

Agencies will need to be trained and educated on where/how these powers can be implemented especially non-BME agencies who have no knowledge/experience of forced marriage. The development of statutory guidance will ensure that staff within these agencies will be more competent to deal with identifying and dealing with the problem of forced marriage in an appropriate manner.

As a result of this there will be more awareness and understanding of Forced Marriage issues and better support systems in place to help victims.

**12. Is there enough protection in Scotland for children and young people under 16 affected by forced marriage?**

**NO**

We are aware that there are various legislative options (under the Children's (Scotland) Act 1995) by which children and young people can be protected from being taken out of the country to be married.

However, anecdotally we have been told that a number of young people 16 years or older, contacting women's services, have known about or worried about the prospect of forced marriage since before they were 16 years old but have not felt confident enough to bring up the issue with a teacher or other adult who can help.

There is often an issue around 'shame' and 'dishonour' which is a powerful constraint upon young people within their families and communities. And many workers do not feel equipped enough to address and, if need be, challenge the actions of parents who remove their children from school to go abroad, or to offer support to black/ethnic minority pupils who may be vulnerable or at risk of being forced into accepting and fulfilling parents' or communities' expectations.

Better training and awareness-raising is certainly required, not just for the staff in educational establishments but all staff in statutory and voluntary organisations that may come into contact with vulnerable children or young people from minority ethnic communities at risk of forced marriage.

**13. If we introduce legislation on forced marriage, do you think we should also extend it to forcing someone into a civil partnership**

**YES**

Engender works to make Scotland a fairer, safer place and to support people, organisations and our government to make equality a reality. For this reason we hold that the law should apply equally to civil partnerships. We are also aware that immigration is one of the many reasons behind forced marriages and that both men and women may be forced into civil partnerships to make it possible for their partners to migrate to the UK.

**14. Are there any difficulties in accessing civil legal aid for the current civil remedies described in this consultation**

**YES**

Difficulties begin by the majority of victims currently being unaware that there are civil remedies that they could access to help them in the case of a forced marriage.

Presumably, lack of knowledge and understanding of the issue of forced marriage across the board would mean that many people and especially young people would be unaware that they were entitled to civil legal aid.

A major problem is that there are very few practitioners accepting legal aid to use these civil remedies. There are also difficulties in getting immediate access to legal aid for these civil remedies as the legal aid board is not always sure on how to respond to forced marriage cases.

**15. Following on from Question 14, would the same issues arise in relation to any new statutory civil remedies that may be developed following this consultation**

**NO**

Engender believes that it would be easier for the legal aid board to grant legal aid as it would be very clear to them that forced marriage is unlawful. However, any new law should make a provision in it for entitlement to legal aid as it is vitally important to make clear to all concerned that legal aid is a 'must' in these cases.

We are in no doubt that there also needs to be clarity on how legal aid will be made available to third parties acting on behalf of the victim as we are keenly aware that Women's Aid and other voluntary sector groups do not have the funding available to cover any legal costs.

It is important to note that unless the Scottish Government publicises information about access to civil remedies and to civil legal aid in the communities that are most affected by forced marriage, then the same issues will arise. The government should also encourage more training for lawyers across Scotland.

**16. Are you/your organisation currently working to address forced marriage?**

**NO**

However, Engender does work in a range of ways to support women's organisations across Scotland on issues of equality and human rights. In responding to this consultation we have had contact with a range of organisations including Southall Black Sisters, BEMIS, Shakti Women's Aid, Amina – the Muslim Women's Centre and Sikh Sanjog.

**17. The Scottish Government funds a range of organisations working to support those affected by forced marriage, what other non-legislative action do you think the Scottish Government should take to tackle forced marriage in Scotland?**

Engender believes that it is a matter of concern that we have no current forced marriage statistics for Scotland except those quoted in the consultation document from the FMU. This leaves us in the unsatisfactory position of guessing at the numbers affected.

It must also be acknowledged that recorded incidences in England and Wales are unlikely to reflect the true scale of the problem. Action must be taken on this.

As well as ensuring future funding is available to enable existing organisations that work towards tackling forced marriage to continue to do so, the Scottish Government could also assist in promoting better public awareness of this issue through:

- A media campaign highlighting the issue and the subsequent law including foreign language TV and Radio channels that transmit in the UK. Media broadcasts and debates would reach many including women via daytime satellite TV channels/ community radio stations.
- Working with the Forced Marriage Network to produce information or guidance for agencies and/or community members, including young people. Appropriate leaflets and literature should be produced in community languages. Information about the current civil and criminal laws should be disseminated to agencies and minority communities. It should include how these laws are applied and who handles it and what it can mean in very practical terms.
- Having a raft of education measures targeted at specific audiences and delivered in a range of ways. And as previously mentioned there should be additional training for teachers, health workers, social work staff and other professionals who may be approached or become aware of an issue.

The Scottish Government must also build links with community groups (and not just by consulting 'Community' or 'Faith leaders') to engage with them in discussions around the sensitive issue of forced marriage.

Engender is highly concerned about the shameful 'No Recourse to Public Funds' situation and urges the Scottish and UK governments to revoke the rule as it exacerbates the situation of those women who are brought from abroad for a forced marriage.

*Shakti Women's Aid are regularly contacted by women who have been forced into marriage or are in the process of being forced into a marriage but who have a 'No Recourse to Public Funds' immigration status, which can severely limit their options for help. More often than not, those women who are not British residents, face the option of leaving their partners to be sent back to their country of origin, only to face further abuse from family and community for having 'shamed' them; or they can stay within the forced (often abusive) relationships. Some action needs to be taken to tackle this problem.*

The Scottish Government must ensure that victims of forced marriage who have to flee home have access to safe housing, money and education and are not forced into poverty because of the choices they have made.

We are also aware that young boys and men are affected by forced marriages and that the Scottish Government must therefore consider investing in providing services to them.

**18. Do you think there is a need for agencies in Scotland to improve their response to cases of forced marriage?**

**YES**

There is not enough recognition of the issue of forced marriage amongst agencies in Scotland and Engender supports the proposed forced marriage civil remedies in the hope that they will work to increase understanding and make agencies take note of the seriousness of the issue. No differently from any other form of violence against women, forced marriage is unacceptable in our society and therefore is everybody's concern.

If you wish to contact Engender about any issue raised in this response please telephone us on 0131 558 9596 or email [Carol.Flack@engender.org.uk](mailto:Carol.Flack@engender.org.uk)