

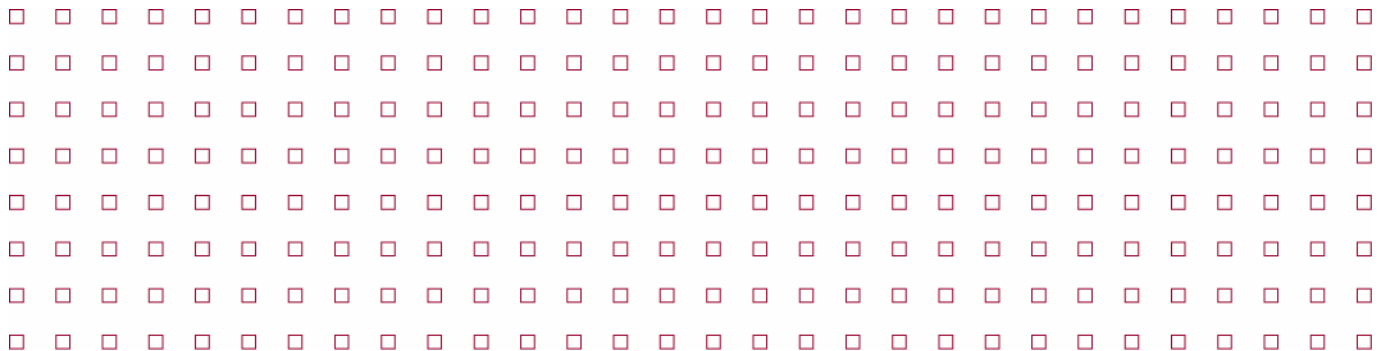


Ministry of
JUSTICE

Forced Marriage (Civil Protection) Act 2007

**Guidance for local authorities as relevant third party and
information relevant to multi-agency partnership working**

**Ministry of Justice - Domestic Violence and International Family Policy Branch
October 2009**



Guidance for local authorities as relevant third party and information relevant to multi-agency partnership working

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Introduction

Purpose

1. This guidance is intended to provide additional advice and support to frontline local authority employees when they are considering making an application as a Relevant Third Party under the Forced Marriage (Civil Protection) Act 2007¹ (the Act). This supplements existing statutory guidance “The Right to Choose²” issued under s.63 Q(1) of the Act and “Multi-agency Practice Guidelines: Handling cases of Forced Marriage³”, issued by the Forced Marriage Unit (FMU). We strongly recommend that those considering making an application for a Forced Marriage Protection Order under the Act refer to these documents. The Multi-agency Guidelines include case studies that might be helpful. In the longer term, the content of this guidance will be included as part of the Multi-agency Practice Guidelines.

Audience

2. This guidance should be used by all caseworkers and legal advisers within local authorities who work to:
 - safeguard children and young people from abuse; and
 - protect vulnerable adults - people with support needs - from abuse.
3. Those working in children’s social care and adults’ social care teams are most likely to come across forced marriage cases and will therefore need to consider the potential for a Forced Marriage Protection Order (FMPO) alongside existing measures of protection in order to discharge their statutory duties. These cases should be brought to the attention of their legal departments. However, it is also important to ensure that those working within education and housing are made aware of this guidance. These agencies will need to be aware of what to consider should anyone disclose concerns to them.
4. This guidance highlights some of the general issues that need to be considered when making an application to court. Its contents will be relevant to all those statutory, non-statutory and third sector agencies which may be faced with a victim disclosing incidences to them. This includes the police, education, health, housing and benefits sectors. It is intended that this guidance will be circulated widely across all agencies.

Legal context

Forced Marriage (Civil Protection) Act 2007

5. The Act came into force on 25 November 2008. It makes provision for the family courts to make a Forced Marriage Protection Order to prevent a forced marriage from occurring or to offer protective measures when a forced marriage has already taken place. The court’s powers are quite wide and orders may contain prohibitions,

¹ http://www.opsi.gov.uk/acts/acts2007/ukpga_20070020_en_1

² www.fco.gov.uk/resources/en/pdf/3849543/forced-marriage-right-to-choose

³ <http://www.fco.gov.uk/resources/en/pdf/3849543/forced-marriage-guidelines09.pdf>

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restrictions or requirements or such other terms as the court thinks appropriate to stop or change the behaviour or conduct of those who would force the victim into marriage.

6. Examples of the types of orders the court might make are:

- to prevent a forced marriage from occurring;
- to hand over **all** passports (where there is dual nationality) and birth certificates and not to apply for a new passport;
- to stop intimidation and violence;
- to reveal the whereabouts of a person;
- to stop someone from being taken abroad; and
- to facilitate or enable a person to return to the UK within a given time period.

7. Orders may also be made against other people, not named as respondents in the application, recognising the complexity of the issues and the involvement of the wider community and the numbers of people who might be involved.

8. The court may add a power of arrest where violence is threatened or used or where there is a risk of significant harm, either to the intended victim or to someone else in connection with the intended marriage and the court considers that there will be inadequate protection without it. Breach of an order made under the Act is not a criminal offence, but the respondent may be arrested if the police believe there is reasonable cause to suspect there is a breach of the order. Breach is dealt with as contempt of court and the courts will have the full range of sanctions available to them, including imprisonment.

9. Under the Act, the following three categories of person can make an application for a Forced Marriage Protection Order:

- a victim;
- anyone can apply for an order on behalf of a victim, as long as they obtain the court's permission to make an application; and
- a relevant third party, who can make an application on behalf of a victim but does not need to seek leave of the court (see paragraph 13).

10. The court itself may also make a FMPO of its own volition in other proceedings, either public or private law.

11. It should be noted that an application for a FMPO is not an alternative to the work of the police and Crown Prosecution Service investigating and prosecuting crimes. Crimes may be investigated and offenders prosecuted at the same time as an application is made or an order is in force. Although there is no specific criminal offence in England and Wales of "forcing someone to marry", criminal offences may nevertheless be committed. Perpetrators - usually parents or family members (but could also include members of the wider community) - could be prosecuted for offences including threatening behaviour, assault, kidnap, abduction, theft (of passports), threats to kill, imprisonment and murder.

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12. It should also be noted that referral to an accredited Family Law practitioner to deal with wider issues of private or public family law where relevant is equally important to meet the client's holistic needs.

Relevant third party

13. In November 2008, following public consultation⁴, the Government set out its plans to specify local authorities as the relevant third parties under the Act. The Family Law Act 1996 (Forced Marriage) (Relevant Third Party) Order 2009 gives effect to this, and local authorities will be able to act as relevant third parties with effect from 1 November 2009. This means that when local authorities make an application for a FMPO after this date they will no longer need to complete the FL430 form for leave to apply on behalf of someone else. There will be a revised RTP form.

Identifying cases and working with victims

14. The Multi-agency Practice Guidelines provide vital information on the issues around forced marriage, the motives of those who promote it and the consequences for victims. The following key points should be noted:

- forced marriage is not the same as an arranged marriage. In an arranged marriage, both spouses can choose whether or not to accept the arrangement. In forced marriage, one or both spouses do not (or, in the case of some adults with disabilities, cannot) consent to the marriage and duress is involved. Duress can include physical, psychological, sexual, financial and emotional pressure;
- forced marriage is recognised in the UK as a form of violence against women, domestic/child abuse and a serious abuse of human rights;
- hundreds of people in the UK (particularly girls and young women) some as young as 9 are forced into marriage each year. It should also be noted that approximately 15% of cases dealt with by FMU in 2008 involved male victims. Some are taken overseas to marry while others may be married in the UK; and

The warning signs of forced marriage can include, but are not exhaustive:

- a history of older siblings leaving education early and marrying early;
- depressive behaviour including self-harming and attempted suicide;
- unreasonable restrictions such as being kept at home by their parents ("house arrest") or being unable to complete their education;
- unexpected / extended absence during term time for a holiday or to visit sick relatives; removed from education during term time and/or not returned after the holiday period; and
- a person always being accompanied including to school and doctors appointments.

Handling cases where Forced Marriage is an issue

15. It is essential that local authorities refer to statutory guidance and the Multi-agency Practice Guidelines as soon as they are alerted to a potential case of forced marriage.

⁴ Forced Marriage (Civil Protection) Act 2007 – Relevant Third Party CP 31/07

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In these types of cases, practitioners may only have one chance to speak to a potential victim of forced marriage and the opportunity to take effective action may be limited, particularly where there is the threat of removal from the country. Where children are involved, some areas may approach forced marriage issues by following appropriate child protection procedures.

16. To ensure the safety of the victim is protected, practitioners must be aware of the following key points, which have been reiterated here in light of their importance:

- ✓ **always take the issue seriously and recognise the potential risk of very significant harm to the victim:** many professionals find it hard to believe the lengths that families go to in order to force a marriage and that families do kill in the name of honour. Young people are regularly told that an elderly relative is dying in order to persuade them to leave the country;
- ✓ **see them on their own in a private place where the conversation cannot be overheard;**
- ✓ **gather as much information as possible about the victim – it may be the only opportunity;**
- ✓ **remind them of their rights i.e. that they have the right to enter into marriage with their full and free consent and the right to make decisions about their lives; and**
- ✓ **discuss the case with the Forced Marriage Unit on 0207 008 0151.**

Do not:

- X send the victim away and dismiss the allegation of forced marriage as a domestic issue;
- X inform the victim's family, friends or members of the community that the victim has sought help; or
- X Attempt to be a mediator (see sections 3.10 and 9.1 of the multi-agency guidance on the dangers of family mediation).

17. Areas may wish to devise their own localised check-list of hints on handling for front-line staff. We recommend in all cases that all practitioners speak to their legal departments so they are fully aware and can advise on the types of legal remedies that might be available to support a victim from this early stage. Further information on the full range of legal remedies that are available in addition to Forced Marriage Protection Orders can be found at Chapter 3.15 in the multi-agency practice guidelines.

18. A FMPO may be appropriate alongside other remedies such as wardship. In some cases, for example, where the forced marriage has not yet taken place, it may be more appropriate to make another order instead. This should be considered if the victim's family is unaware that they are seeking help, or if the victim cannot be given immediate protection because they are already abroad. That said, some victims that have remained with their families have felt more secure if a FMPO is in place alongside a care order for example. Assessing the level of risk to the Person to be Protected (PTBP) is therefore essential in deciding which option to pursue.

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Partnership working

19. Multi-agency working to achieve an effective co-ordinated community response has been shown to be an essential component of the Specialist Domestic Violence Court (SDVC) systems approach⁵. This approach is clearly transferrable to forced marriage cases which require the same level of inter-agency co-operation and information sharing to protect individuals and respond in a timely and effective way.
20. We strongly recommend local authorities take steps to forge links with local schools, health services, the police and the voluntary sector and agree an appropriate local system for referrals, support and response. This includes close liaison with police partners to agree which agency will act on the FMPO application in specific circumstances. These linkages are vital as cases progress through the courts and also following the making of a FMPO, when contact with the victim needs to be maintained not just to monitor their welfare but also to ensure the order remains effective.
21. Local areas should agree with partners the best referral routes for cases. Information Sharing and Referral Protocols should be implemented as soon as possible between all agencies. It is also important to take into account the network that exists among extended families and communities and how quickly information may be passed among them. It is also a reality that this network could include anyone working in any number of agencies made aware of a referral or an application. Professionals could be put under enormous pressure to divulge information and face conflict where professional duties are compromised by very strong community ties. Protocols must ensure steps are taken that do not put the victim at further risk or escalate the situation.
22. Where an order may include provisions for action to be taken or co-ordinated by the FMU, it is essential that the Unit is contacted before the order is made, whenever possible, to alert them in advance. This could apply in cases where there is an imminent threat of a person being taken abroad or if they are already abroad.

Forced Marriage Protection Order applications

Making an application

23. Applications for a FMPO made by a Local Authority should be made via its legal department, in close liaison with the relevant frontline practitioner. Caseworkers and social workers should not be trying to pursue an application themselves.
24. All the relevant information about making an application for a FMPO is in HM Courts Service leaflet FL701. The application itself is made on Form FL401A. This form has been changed to take account of implementation of the relevant third party provisions and includes a section for those making an application as a relevant third party to include background information about what they know about the circumstances of the person to be protected and the wishes and feelings of that person. Links to all the court forms are listed at the end of this guidance. Further background and guidance from the court perspective can be found in the JSB Guide for the judiciary, also attached.

⁵ National SDVC Resource Manual:

<http://www.crimereduction.homeoffice.gov.uk/domesticviolence/domesticviolence59.htm>

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25. It is possible, in emergency situations, to make an application *ex parte*, that is, without notice to the respondent(s). (Over half the orders made so far have been made *ex parte*.) This may be necessary in situations where the PTBP is in immediate danger or at risk of being taken abroad.
26. All applications are supported by affidavit and the court makes its decision on the civil burden of proof, on the balance of probability. There is therefore no 'threshold' to be met as in child protection cases.
27. The courts can also direct that certain information be withheld in order to protect the victim or any other person who may be at further risk if certain facts were known, or for any other good reason. (See Rule 3.33(4) Family Proceedings Rules 1991)
28. A FMPO can be sought in other proceedings, for example, alongside Court of Protection issues or wardship or where adults with support needs are involved under inherent jurisdiction of the court.
29. If the victim decides to retract, every effort should be made to ensure that they are withdrawing of their own free will and are not being coerced.

Court locations

30. Those making an application will need to consider the most appropriate location for the case to be heard. Given the specialist nature of these cases fifteen county courts have been designated to deal with applications for Forced Marriage Protection Orders in order to build up expertise in this area. (This number may increase in the future.) Applications may also be heard at the High Court in London (RCJ) and wherever there is High Court jurisdiction elsewhere. The county courts included are:

- The Principal Registry of the Family Division (London)
- Birmingham Family Courts
- Blackburn County Court
- Bradford County Court
- Bristol County Court
- Cardiff Civil Justice Centre
- Derby County Court
- Leeds Combined Court
- Leicester County Court
- Luton County Court
- Manchester County Court
- Middlesbrough County Court at Teesside
- Newcastle-upon-Tyne Combined Court Centre
- Romford County Court
- Willesden County Court

31. The contact details for these courts can be found in the HM Courts Service leaflet FL701.
32. Factors affecting a decision on which court is best placed to hear an application for a FMPO are likely to include whether the victim wants to remain anonymous, the risks

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involved if the victim proceeds with an application for a protection order and if they remain in the area, and the proximity to the court location and local facilities, including support networks.

33. The courts have generally assigned specific court staff to act as liaison for emergency applications or special facilities and judiciary to deal with applications. Practitioners may wish to check at the court that their case is being listed with the specialist judge. Similarly in cases that involve adults with support needs who lack capacity or who may have learning disabilities, practitioners may want to check if there is a judge who can also deal with Court of Protection issues.

Special facilities

34. Those making an application for a FMPO will need to consider as part of the application form whether there is a need for any special facilities if the victim is going to attend court hearings. Special facilities in the family courts are not as widespread as Special Measures in the criminal courts, but many family courts are still able to provide additional safety measures for vulnerable or intimidated court users. These could include arrangements to visit the court in advance to familiarise themselves with the venue and where they sit. Some courts are able to arrange for the applicant to enter and leave court through separate doors and have separate toilets available from those that the respondent(s) and general public would use. Most waiting areas are communal and could provide an opportunity for respondents to intimidate and pressure the victim. Courts may be able to arrange for the victim to wait in another room. There could also be facilities available to screen the witness, or to allow evidence to be given by live video link from a remote location or in private. We recommend that enquiries should be made with the relevant court as soon as possible after an application has been made.
35. Her Majesty's Courts Service will provide an interpreter if required. This is irrespective of whether solicitors are involved or public funding is available. An interpreter will generally be available for the applicant, respondent(s), and the victim where they are not an applicant, but giving evidence as a witness. Agencies should contact the relevant court manager to make the necessary arrangements. The Multi-agency Guidance also covers this issue - see Chapter 3. Family members must not be used to interpret.

After a Forced Marriage Protection Order has been made

36. Once a Forced Marriage Protection Order is in place, it is essential that local authorities work closely with the victim and the relevant support service if there is one, to ensure it offers the level of protection that was envisaged. The earlier section on partnership working is relevant here; links need to be established with other agencies, in particular the police and, in high risk cases, MARACs, to ensure ongoing support is available to victims as needed.
37. Cafcass or CAF/CASS CYMRU practitioners may have been appointed as Guardian ad litem to provide an independent view. There may also be ongoing involvement for them beyond the application / order for example with a Family Assistance Order⁶ if deemed appropriate.

⁶ http://www.cafcass.gov.uk/PDF/FAO_leaflet_0809.pdf

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38. If a Power of Arrest is attached to a Forced Marriage Protection Order, then the local authority should ensure that the order is served on the local police station, or such other police station named by the court, to ensure that officers are aware of the existence of an order in the event of any breach. The order will also need to be served on the respondents. Some courts are also including a provision that the order be disclosed to the Foreign and Commonwealth Office, that is, the FMU.
39. Neither the Act nor the order includes provisions to annul a Forced Marriage. Local Authorities and other agents should be aware of accredited family law practitioners in their area who deal with Matrimonial Proceedings. Links to these practitioners should also be made in local MARACs (Multi-Agency Risk Assessment Conferences).

Further information

40. For further information on Forced Marriage please see below:

Ministry of Justice	Jan Salihi – Forced Marriage Policy Manager and FMPO-IDVA Support Pilot lead	jan.salihi@justice.gsi.gov.uk 020 3334 3109
HMCS forms		
http://www.hmcourts-service.gov.uk/courtfinder/forms/fl701_leaflet_.pdf - HMCS information leaflet		
http://www.hmcourts-service.gov.uk/courtfinder/forms/fl401A_w.pdf - application form (Revised version will be available from 1 November 2009)		
http://www.hmcourts-service.gov.uk/courtfinder/forms/fl430_w.pdf - application for leave to apply		
http://www.hmcourts-service.gov.uk/courtfinder/forms/fl407A_w.pdf - application warrant for arrest		
Forced Marriage Unit	The Forced Marriage Unit runs a helpline for the general public. Practitioners handling forced marriage cases can also call the FMU for advice and support. Telephone 020 7008 0151 between 9am-5pm Monday to Friday. Or you can email the Unit at fmu@fco.gov.uk During out of hours, call 020 7008 1500 and ask for the Foreign and Commonwealth Office Global Response Centre.	
http://www.fco.gov.uk/en/fco-in-action/nationals/forced-marriage-unit/		
FMU leaflet “What is a Forced Marriage” http://www.fco.gov.uk/resources/en/pdf/2855621/what-is-forced-marriage		
HM Government Multi-agency practice guidelines handling cases of forced marriage - June 2009 http://www.fco.gov.uk/resources/en/pdf/3849543/forced-marriage-guidelines09.pdf		

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