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Dear Sirs,

Re: Forced marriage consultation

Thank you for the opportunity to consult (again) on proposals to criminalise forced marriage. I am writing from Eaves. We are a London-based charity though we work outside London throughout England and Wales on particular activities. We were established in 1977 and provide high quality housing and support to vulnerable women. We deliver services to immigrant women with no recourse to public funds, victims of trafficking, survivors of rape, sexual and domestic violence and to women with complex needs including women with substance abuse issues, mental health issues, ex-offenders and women in prostitution. We also carry out research, advocacy and campaigning to prevent all forms of violence against women.

Our no recourse cases, and a smaller proportion of our DV cases, will often include reference to a forced or an arranged marriage, the distinction being not always clear even in the victim's own mind. We are also a member of the No recourse coalition and we work closely with key partners in the BME sector such as Imkaan, Southall Black Sisters, Newham Asian Women's Project, Nia Project, Ashiana etc.

We are conscious that there have already been two consultations on forced marriage and two HASC committees though one of these appeared to be extremely limited in the evidence it took. I must also say that I find the questions as to whether or not to create a specific offence of forced marriage to be rather leading. They are not drawn in such a way, for instance, as to enable us to outline what might be the reasons why criminalization could be actively harmful. However, I try to address this anyway within this framework.

We totally understand the very strong desire to send a powerful message about the gravity of the abuses involved in a forced marriage and the unacceptability of

the practice. However, we have found it extremely difficult to make a decision one way or another as we have serious concerns that criminalization may be detrimental to victims and to our ability to help them and there is a lack of research or evidence to help inform this decision. Therefore we do not take a position as such but we are pleased to provide input into this debate.

Criminalising Breach

We note that this consultation does not seek views on whether or not to criminalise breach but how to implement this. Nonetheless, it is worth noting that since the introduction of FMPO in November 2011 in Scotland with an automatically criminalised breach, there have been no orders taken out in Scotland. This does not appear to be because forced marriages have stopped happening nor is it for any shortage of forced marriage cases in Scotland. When FMPO's became available (without automatically criminalised breach) in England and Wales this power was immediately used. It did not take 4 months for the first order to be made. This causes us to question, therefore, whether the automatic criminalisation of breach is having a deterrent effect to seeking help at all. This might give pause for thought as to whether even criminalisation of breach is the best idea.

Having said that, we do broadly feel that it seems consistent with other DV type measures to make criminalisation of breach an option. (However, we would highlight that forced marriage usually is slightly different to most DV scenarios as the rupture in relations is between the whole or large parts of the family and with a very young person).

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

- Should it be an offence to breach any/all provisions contained in the order with no specific power of arrest required?

Given the above caveat, then yes but would also welcome victims retaining choice as to which route to take.

- If the CPS decides that there is not enough evidence to provide a realistic prospect of a criminal conviction, or that a prosecution is not in the public interest should victims still have the choice to return the case for committal in the civil court?

Yes there should remain an option to return to civil proceedings.

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

Probably the higher penalty.

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

No.

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

It would seem that this question throws up one of the difficulties of forced marriage cases in that there may be many who would know of an order and its breach but they may be themselves under threat or coercion though this could be easily alleged and difficult to prove or disprove. It would also be very difficult to identify and prove who did and didn't know what and who did or didn't do something especially as many may try to help confidentially so there would be no record. Proving an omission seems difficult. Therefore on balance probably not though this then rather defeats the purpose since it is the case that there are often many named respondents some of whom are definitely agents with power and volition to do something about it.

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

There would need to be considerable support and reassurance which means investing in BME and specialist young people's services. Many people would want to help confidentially and anonymously – it is not clear that this is possible. Many may rightly or wrongly fear repercussions themselves and may need additional support and safeguarding for that.

Do you feel that any other mechanisms, in addition to existing specialist measures, (e.g. video-recorded statements, live links screens in court), need to be in place to help victims and witnesses of forced marriage, particularly the young through the criminal justice process, once any criminal prosecution proceedings take place? Please explain your answer giving examples of the types of mechanisms and resources needed.

As indicated elsewhere – there are real or perceived fears of threats and danger and repercussions that could mean young people need extensive and lasting support and safeguarding. This means investment in the BME and young people's support services and possibly in social services or police to ensure that

the young person stays safe. Questionable also whether they may also need relocation in some cases or better confidentiality practices.

Creation of a specific Offence

- *Do you believe that the current civil remedies and criminal sanctions are being used as effectively as they could be in tackling forced marriage? If not, what more do you think can be done to prevent forced marriage including ensuring victims are not deterred from reporting?*

Existing remedies

Not entirely. The excellent statutory guidance to all public sector bodies is not being followed, indeed is rarely even known about. The many and varied criminal offences involved in bringing about a forced marriage do not appear to be being investigated and prosecuted as we might expect.

We do think that the FMPOs seem effective and it seems to us they are being used increasingly and to good effect even though they have not been available for long and we think they need to be supported, promoted and evaluated. We do also feel that little is done to monitor what becomes of a victim who has obtained an FMPO and there needs to be more monitoring of this.

What more needs done?

It has been consistently pointed out by all parties that schools, colleges and youth facilities are very well placed indeed to identify people at risk or suffering from violence against women and girls, and forced marriage specifically, and to assist them and refer them on to appropriate support. It has also been consistently pointed out that there seems to be very little engagement, ownership, lead or responsibility taken by Department for Education to ensure that this opportunity is not missed. We have consistently pointed out that such matters should be on the school curriculum.

Many teachers know about forced marriage and the impact it has on girls' physical and mental health, education and career and wish to help but do not feel confident or supported to do so. Commonly quite significant members of the community may be on the boards of governors in schools and may be very influential in discouraging the issue being raised. It is a matter of the gravest concern that religious private establishments and other "free schools" or schemes that are privatised make it virtually impossible to ensure that such vital information pertaining to women's and girls' rights enters the classroom. Commonly public sector, including schools, fear that they may be accused of being racist or culturally insensitive if they talk about this human rights abuse.

Implementation of statutory guidelines, education and awareness campaigns for both the community and for the young people, education in schools and more support to BME specialist and young women's agencies who assist and support

young people are all key measures that would help victims through the process whether it is made a specific offence or not.

Addressing potential deterrent effect of criminalisation on reporting

In the event of forced marriage being made a criminal offence there are those who argue this may empower young women to seek help and those who argue it would deter them from doing so. A number of victims say that they feel, if it were criminal, their parents would not do it and/or they themselves would have felt able to challenge their parents and seek help.

There are also many victims and services who say that they would not seek help if it were criminal and indeed it is the case that commonly the first thing victims say is “will my parents get in trouble?” and sometimes they ask, “where other girls have done this, do many of them ever get back with their parents?”. Another first and crucial question is around confidentiality. Many girls believe, rightly or wrongly, that challenging their parents exposes them to risk of honour crimes from a wide variety of possible sources.

There would therefore need to be a huge amount of support and reassurance for victims. This means funding specialist BME and young women’s accommodation, counselling, advocacy and outreach. There would also need to be improved and strengthened practices around confidentiality in and between agencies and around relocation for young women including between educational establishments or benefits schemes. In some cases victims would need witness protection and an alternative identity and long term monitoring and safeguarding as repercussions and reprisals could arise at any time and from more than the immediate family.

A further consideration is that many young women might change their mind and withdraw proceedings either of their own volition or under duress. The difficulties of proof are such that it is possible that prosecution would not pursue the case or a case would fail. It would be necessary to reassure victims that if they withdraw they will not be charged with wasting police time or making false allegations or that if a similar case comes up again later for her that she will not be taken seriously or dismissed as not credible. Likewise if she retracts, or the prosecution drop the case, or it fails; there would need to be measures to ensure that she is kept safe thereafter as it will not be easy to go back into the family environment in that situation and indeed could result in families feeling able to pursue their plan and again could prejudice her being taken seriously in future proceedings.

There would be a need to also make known to victims that even though it is criminal, it does not necessarily mean their parents/family would not attempt it. Therefore if they think there is a serious risk they cannot only rely on it’s being criminal to deter their parents, they still need to take preparatory measures for the worst case scenario – this could be running away or it could be taking steps such as have some secret contact people and numbers, have copies of all their

documentation, have all the addresses in the UK and overseas that may be relevant, have a written record with someone of why they think there is a risk and what they want someone to do at what stage if they disappear or fail to contact, have secret phones and money etc etc etc.

- *Do you think a criminal offence should be created for the act of forcing someone to marry against their will? If so, how do you think the offence should be defined?*

Criminalisation

A large proportion of the agencies that directly deal with the casework involved in supporting victims are of the view that we should not make a specific criminal offence, we also know of some such organisations who support a specific offence.

We feel that there is unanimity as to the horrendous nature of the abuses and harms involved in forced marriage. There is unanimity that there is a need to do more to support victims and the agencies that support them particularly BME and young women's specialist services. There is unanimity that we need to find a means to change attitudes in the community and deter forced marriages and to send the strongest message that this involves serious, unacceptable human rights abuses that will be taken seriously.

There is not unanimity about whether or not a specific offence can deliver any or all of these aims. There is also not unanimity as to whether this will deter or encourage victims to come forward. There is not unanimity as to whether or not this will actually increase the risk of harm and make it harder to assist victims but there is a strong feeling that this may be the case and that is a very serious risk to run with young women's lives.

We feel, therefore, that there is a need for a great deal more research and evidence into the actual or potential impacts and harms or benefits of the creation of a specific offence. This research needs to draw not only on other government officials in other jurisdictions but also on victims' experiences and on the specialist NGOs that support women through this experience.

The offence

As a result we are not taking a position and so therefore do not address how such an offence might be defined. However, there is a real issue about what would be accepted as proof and the nature of intention between arranged and forced marriage and identifying who participated or collaborated knowingly or unknowingly and who under duress and who willingly.

Many of the elements of such an offence would take place overseas which could present additional barriers, costs and time in achieving the relevant level of proof.

The burden of proof is higher in criminal than in civil proceedings. Indeed it is the case that currently an FMPO can be obtained on production of sometimes anonymous materials which is important to the young woman or her friends/family who are trying to help her. This would not be possible in a criminal case.

The higher burden of proof increases the likelihood that prosecution will not pursue a case or it will fail. As outlined above this raises issues for additional support, security and long term safety and credibility of the victim. A retraction, a case dropped or a case acquitted could all present real problems for the victim, her family may make counter claims against her, it could damage her credibility and any future attempt to seek help she may make, it could result in being pursued for false allegations or wasting police time. Whilst the normative value of a law even without a prosecution can be persuasive, nonetheless a lack of prosecutions is not a very strong signal.

A criminal trial exposes the plaintiff to rigorous attacks on their credibility and probing of their evidence and conduct. It also increases the tension between the plaintiff and defendants potentially burning more bridges with family and indeed in some cases possibly increasing threats and dangers from extended community to the plaintiff.

A criminal case is costly, defendants are entitled to legal aid and often there are multiple defendants and a criminal case commonly drags on over a long period which adds to the trauma of a young woman, the opportunities and causes for her family/community to heap pressure on her and withdraw and the difficulties to rebuild relationships should that have been desired, safe and possible before. It is also not clear how she would be kept safe and supported in this time and again there would need to be adequate funding to BME specialists or in some cases for witness protection.

The FCO and police have also clarified that a specific offence would mean that there would not be any particular choice or control in matters for the victim. This would therefore erode the civil remedy of FMPO – it would not be used and it would lapse as would the legal aid funding that supports it and indeed defendants in criminal trials are entitled to legal aid. In a civil case the victim maintains considerable input and control in the case whereas in a criminal case it becomes a matter between the state and the defendant with the victim having no say.

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

If people (victims?) are feeling deterred from reporting the crime due to their desire to retain family relations or their fear for their own safety, it is very hard to imagine what measures could guard against this. Those that are easily

envisaged are quite onerous and often expensive measures such as witness protection, relocation, sheltered, specialist accommodation or long term family interventions, counselling, monitoring and safeguarding.

- *Do you think there should be an offence of luring someone abroad; luring someone to this country or indeed within this country; or from one country to another for the specific purpose of forcing them to marry?*

No. The UN includes forced marriage as an example of a form of trafficking and form of contemporary slavery. The definition of trafficking used in the Council of Europe Convention Against Trafficking in Human Beings which we have ratified, is clear that trafficking involves the movement by deception, threat or force of people for the purposes of exploitation. A forced marriage is a form of exploitation and the definition does not require that that movement be across international borders. Already there are not enough prosecutions under trafficking legislation. There is no need for the creation of a new offence to the same effect.

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

When courts rule on the validity or not of an allegedly forced marriage they apply a subjective test for "Duress". This means that it is enough to find that the duress was such as to overcome the mind and will of that particular individual at that particular time rather than an average person. This is right and proper.

Age therefore is of limited relevance in these cases apart from the obvious issue of where a young person does not have legal capacity to consent or is not "Gillick competent". There are 15 year olds who are prepared to stand up against their parents and community and run away and reject a marriage. There are independent 36 year old doctors and pharmacists living in their own flat in another town who do not do so. FCO's own cases range from age 5 to 87 according to Chaz Akoshile at the recent consultation event.

The issue here is more about the nature of the relationship with the family and community. This is exacerbated by the fact that forced marriage often occurs in tight-knit and immigrant communities where racism, stigma and stereotypes are already quite threatening to those communities and where to leave means ostracism and isolation from your whole extended family and community and possibly a risk of an "honour" crime. It is also exacerbated by the fact that in some cases the family may in every other way be loving, close and supportive – it is just the marriage that is causing tension.

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

The array of criminal and civil remedies available is quite vast and they seem perfectly clear. Situating forced marriage very clearly as a human rights abuse, a form of contemporary slavery or trafficking and an issue of both domestic violence, violence against women and child protection seems very clear.

There also already exists statutory guidance situating clearly the obligation on public sector bodies and outlining the range of crimes and offences and international and domestic legislation that applies.

Not at all sure how it could be clearer but there are some who would maintain so. The issue is more about better implementation of best practice, safeguarding, investigation and prosecution whether or not it is created as a new offence.

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

It should not do so. If professionals were receiving regular, updated training and were held properly accountable and were applying the statutory guidance and addressing the crimes involved then this should not be of any relevance.

It is the case that many public sector bodies are not applying the statutory guidance and it seems some seem to fear that they may be accused of cultural insensitivity. To that extent maybe a specific criminal offence might assist to boost their confidence to address the issue but that is not, and never should be, the reason to introduce a new criminal offence. The answer to their failing to meet their existing obligations is to train them, hold them accountable and ensure that they do so. The erosion of legal aid, equalities obligations, criminal compensation and accountability mechanisms and funding to specialist BME young women's organisations further makes it harder for both the victim themselves and the agencies supporting them to help the authorities to tackle the problem.

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

There is often a normative effect with legislation and this community is often otherwise quite "law abiding". This may cause us to think or hope that it may achieve that shift especially if a raft of other supportive measures were in place. This might include more support to BME specialist and outreach organisations. It might include education, awareness, campaigning and training etc.

However, as indicated above there is broadly unanimity that forced marriage is unacceptable, abhorrent and a human rights abuse. Even the individuals in the communities most concerned will vocally declare that forced marriage is wrong and often also against their various religions as religious leaders will also say.

These same individuals will organise an “arranged marriage”. While there are, on paper, clear definitions that situate the difference between forced and arranged marriage, yet family members, even victims themselves often find it very hard to distinguish between the two and of course some perpetrators, knowing well the difference, will exploit this grey area. But therefore it remains open to question as to whether or not it will achieve a deterrent effect.

There are also concerns that those wishing to bring about such a marriage will use other evasive tactics some of which may be more harmful. For instance, families are entitled to send their children abroad to be reared by relatives and educated in the local system. Schools do not track what becomes of a child that has changed schools.

The obvious solution for a family member who is intimidated by criminalisation and fears that their child may seek help or resist a marriage is to prevent them ever thinking about it or seeking any help. Sending a youngster, at increasingly early ages, to stay with the family overseas and, maybe but maybe not, access some form of education over there however good, bad or indifferent is a useful and legal way to limit the child’s achievements and expectations, isolate it from help, inculcate it into accepting it’s best option is marriage and children.

Indeed the UK broadly recognises marriages that have been conducted in accordance with the rules of marriage of the state where they took place. It becomes very difficult to challenge the marriage at a later date and indeed there is a greater likelihood of the young person having children and having little educational achievement such that they see little to be gained in challenging it.

FCO’s own figures show that 29% of their cases are under 18 and one third of these are under 16. The number of minors and particularly those even under 16 seems to be increasing over the years since FCO first started collecting figures – this may demonstrate that families are already realising that removal at younger ages is a useful tactic. It may be that this would continue to happen anyway but it may also be that the stakes would be higher if criminalisation is a factor and could therefore exacerbate this trend.

EIA

- *Do you have any data or other information on the demographic profile of people who are forced into marriage or who force someone into marriage? If so please provide data or source of data.*

Most of my information comes from FCO though am conscious that this reflects UK nationals being taken abroad which is not the whole picture. Am aware that cases can arise anywhere – know of cases in Jewish orthodox communities, traditional Christian families, traveller communities, Eastern European

communities, as well as animist, Muslim or Christian African and Arabic communities and across South Asia. I believe it occurs in South East and Far East communities as well and in some South American contexts.

It is also important to note not only who commits forced marriage but their motivations. There is a tendency to assume it is about immigration whereas in fact there are an array of motivations. These are quite clearly laid out in the statutory guidelines and include issues of land and inheritance, family ties, controlling “western” or “unconventional” behaviour, misguided religious or cultural beliefs as well as issues around illness, bereavement, disability and sexuality.

- *Do you think any of the proposals would have a particular impact on people who fall within one of the protected characteristics listed above? If so please provide details.*

Yes. Proposals will affect perpetrators and victims of forced marriage. Therefore this is likely to disproportionately impact on BME communities and on women but could also have impacts for age and sexuality.