

Response by the Newham Asian Women's Project (NAWP)

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

March 2008

Background to Newham Asian Women's Project

Newham Asian Women's Project (NAWP) is a London-based charity, which was established in the mid 1980s to address the issue of domestic violence within the Asian community. Our involvement in working with and supporting Asian women and girls at a grassroots level for the past two decades has provided us with great insight into their needs, especially in the context of all forms of domestic violence, sexual abuse, forced marriage and self-harm. Consequently, over the years our services have been strategically developed to provide a holistic approach to issues that affect our client base. Our support services include: safe-refuge housing; counselling programmes; youth projects and activities; mental health support; legal advice; and education, training and career development.

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Background to NAWP's response to the Third Party issue in relation to forced marriage

When NAWP commented on the Amendments to the Family Law Act in March 2007, we raised a number of concerns regarding the involvement of relevant third parties. NAWP believes that it should be the individual's choice whether or not to make use of forced marriage legislation to apply to the court for an order, and that it would be wholly inappropriate for a third party to intervene.

NAWP strongly disagrees with the idea that remedies are not only available to the victim, but also to "any other concerned person". This is a considerable departure from the current law, where any application for remedy can only be brought by the person seeking redress, unless the person is a minor or suffers from a mental incapacity, in which case the application can be made by the individual's "Litigation Friend". Furthermore, in comparison to the "Litigation Friend", the status of the "Concerned Person", as cited in this Amendment, has been very loosely defined, and thus is open to abuse (even with the safeguard that any such concerned person must first seek the specific permission of the court.)

It is not inconceivable that a "concerned person" could abuse the provisions of the Act in the following circumstances:

- Where an embittered ex-partner falsely alleges that the "victim" is being subjected to a forced marriage
- Where the local authority brings proceedings on behalf of a victim, because they have had to re-house the victim at their expense and wish to seek "compensation" to cover that victim's housing costs (we note that local authorities have been specifically mentioned as appropriate "concerned persons")

The role that most closely parallels that of the proposed "relevant third party" is the specialist court advocate. The evidence to date suggests that:

- Such advocates are not properly trained, lack sufficient knowledge of legal issues and do not represent specialist needs
- There is no guidance as to what types of organisations should be funded to provide such advocates, and, consequently, certain organisations working with perpetrators have been allocated funding in some cases
- Resources tend to be concentrated on one organisation, thus denying women choice
- The role of the advocate is not well developed or properly integrated into a violence-against-women framework

Without a framework for resources being available to the women's sector, the introduction of these new proposals will not be effective.

We also want to point out that the issue of there being no recourse to public funds for immigrant women on spousal visas is an impediment to their being able to use the provisions of the Forced Marriage (Civil Protection) Act, 2007.

Victims of forced marriage on spousal visas find it difficult to leave the marriage because they are unable to access public funds, and thus are unable to access refuge space and resources to help them support themselves. If such women are to be able to use the provisions of the new Act, they need to be granted access to public funds.

Question 1:

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

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

It would not be appropriate where the victim herself does not want to make any intervention. For example, in a situation where a person is being forced into a marriage, but doesn't want to take a Protection Order under the Forced Marriage (Civil Protection) Act, 2007, there should be no third party intervention. Third party applications can also potentially be used as a tool to prevent a marriage taking place to which the party has given her consent. It would also not be appropriate to make such applications on behalf of a non-consenting person, because there are other, more appropriate avenues to deal with marriages which break down due to issues of consent, such as divorce, annulment etc.

Finally, applications on behalf of children without the consent of a court would not be appropriate.

Question 2:

Are there any circumstances when it is appropriate for a third party to make an application on behalf of a child under 16?

Provision already exists in the law for a third party to make an application on behalf of a child under 16. The court can appoint a Guardian or a Next Friend to act on behalf of a child under 16.

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

The only situation where a third party should be allowed to intervene on behalf of a child is when the child is in confinement or is abroad. In such circumstances, the court's permission should be sought before taking any action, following the care proceedings set out under the Children's Act, 1986.

Question 3:

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

There should be trained personnel who can act as a third party. They could either be based in the social services, or they could be trained CAFCASS officers. However, our staff still see this as a cause for concern, because:

1. Third-party agency takes away the autonomy of the woman facing FM.
2. Few professionals are aware of the FM guidelines, and many agencies are ill-informed and lack knowledge of how to intervene. They may take inappropriate action which endangers the woman.
3. If refugees were to take action on behalf of a woman, then confidentiality about the whereabouts of the woman and/or her children could be jeopardised, creating a potentially dangerous situation.

The problem with granting voluntary organisations the liberty to apply is in deciding who would be best equipped to take the lead. There are also questions of funding and the need for agencies to have the legal expertise to make such applications properly, so that they are not refused by the court, which would add to the victim's distress.

Perhaps a pre-action protocol could empower such organisations (including schools, for example) to liaise with the police, an official solicitor, social services or CAFCASS to prompt applications when and where necessary.

Question 4:

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

As stated above, it is dangerous to allow a third party to intervene on behalf of a child, for the following reasons:

1. The third party may be in a position of power, and so abuse it to suit their own interests rather than those of the child.

2. A child may not be able to speak against the action being taken by the third party, but nevertheless may not agree to that action.

3. It is possible that a third party, such as a school teacher or social worker, will not completely understand the child's background and culture, and so make an intervention without there being actual cause for alarm.

Since the minimum age of marriage in the UK is 16 years, if a marriage is being performed with a child (for example, according to religious personal laws, even though it may not be a marriage in the eyes of the law), social services should intervene in the matter as a child protection issue. In any other situation where it is evident that the child may be harmed or face abuse, intervention should be made in accordance with the existing law, i.e., with the permission of the court and in accordance with the Children's Act, 1986.

Question 5:

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

The third party should be entitled to non-means- and non-merits-tested public funding (i.e. legal aid), whatever the circumstances of their application. It would be wholly inappropriate to expect a third party to meet the costs of any such application on behalf of a victim. If there was no such public funding available, this would deter and even prevent certain third parties from making an application. It would not make sense to allow victims to apply for public funding to obtain the protection of the court, but not to allow a third party to obtain the same protection for the same victim, albeit through a slightly different route.

In circumstances where the third party had a conflict of interest, or was motivated by anything other than the well-being of the potential victim, it would not be appropriate for them to bring an application. For example, local authorities should not bring applications where the motivation is to seek compensation for the costs of re-housing victims of forced marriage.

There is a clear need for a large government investment in ongoing training programmes for agencies and individuals who may be required to act as third parties. Those acting as third parties must have a clear understanding of what forced marriage is, and of the likely impact of intervention in suspected cases of forced marriage, particularly in terms of the safety of victims. Without this knowledge, third parties may bring forward cases of *arranged*, rather than *forced*, marriage. They might also endanger victims of forced marriage by applying for an injunction where this is not the most appropriate course of action, and when, for example, ensuring that the victim had access to safe housing was a much more urgent priority.

NAWP wishes to emphasise that until there is sustainable investment in the specialist sector, the level of success in this sector in combating forced marriage, compared to the criminal justice system, will never be fully known. Without such investment, we will not be able to fight violence against BME women to the best of our ability, because attention will necessarily be drawn away from initiatives that focus on prevention, protection, the needs of the victim and the elimination of such harms against young women and girls.

Question 6

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

All third parties should require leave of the court to make an application. The court would need to make detailed enquiries, and ascertain what attempts the third party had made to seek consent. The court would also need to carefully scrutinise the case to uncover any potential motive that a third party might have, and which might not be in the best interests of the victim.

The relevant third party should also be bound by an overriding duty of care to the victim, to ensure that powers are exercised proportionately. The Act should make it clear what threshold must be reached before such orders are made, so that applications are more likely to discharge their burden of proof and so become more likely to be granted by the court. Information, in the form of printed leaflets etc., should be made available to the victim, so that they are informed about what role the third parties, the court and other professionals play, and the effect of the orders.

In the exceptional circumstances where the victim is abroad or in confinement, and hence is unable to take action on her own or grant consent for such action, the third party should only be allowed to bring an application equivalent to habeas corpus, i.e., bringing the person to the court rather than getting a protection order for them. Any Protection Order should only be granted after consent has been given by the victim about such an order.

Question 7:

Are there any other safeguards required for a relevant third party acting on behalf of children under the age of 16?

In order to appoint a Guardian or Next Friend, the court already needs to check whether there is any potential conflict of interest between the Guardian or Next Friend and the party to the case. In addition, the court should ascertain that the person acting on behalf of the child understands the cultural background to which the child belongs. It is vital that those designated as a

“relevant third party” undergo training on forced marriages and related aspects of this issue.

Question 8:

How can the court administration adapt to meet the needs of those who use the **Forced Marriage (Civil Protection) Act 2007**?

Forms should be as simple as possible so that any applicant (whether victim or third party) is not in the position of only being able to make such an application with the assistance of legal representation. The procedure should also be kept simple, so that victims/third parties can apply on their own. The court fees should be modest and kept to a minimum. The cases need to be prioritised by court staff when they list applications, in the same way that domestic violence cases are so prioritised. A victim should therefore be able to obtain an order within 24 hours, as in domestic violence cases. Court staff, including judges, need to be trained to prioritise such cases. Judges should be given training on the socio-cultural aspects of forced marriages and ‘honour’-based violence. Where necessary, interpreters should be made available during court proceedings, and application forms and notes for guidance should be made available in different languages.

**Newham Asian Women’s Project©
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