



JUDICIARY OF
ENGLAND AND WALES

FROM DISTRICT JUDGE MICHAEL BUCKLEY
Blackpool County Court

Response from the Association of District Judges to the Forced Marriages-Relevant Third Party Consultation paper.

1. In what circumstances is it appropriate to make application on behalf of another? Are there any circumstances where it is not appropriate?

The Association of District Judges endorses the aims and the purpose of the Forced Marriage (Civil Protection) Act 2007. A marriage entered into without the full and free consent of both parties is a form of domestic abuse and a violation of human rights. It is the absence of choice which distinguishes an arranged marriage from a forced marriage. The fact is that the victims are likely to be young and vulnerable and the Association, therefore, agrees that it is important for the Act to be implemented in a way that empowers the victim to obtain an order in whatever circumstances such a victim may find him or herself. The provision in the Act for relevant third parties to be able to make application on behalf of victims in certain circumstances is an important and significant provision.

The consultation paper itself envisages victims who have been intimidated and threatened to such an extent that they are not capable either physically or mentally of providing full comprehensive continuing instructions to a solicitor. For all sorts of reasons a victim may simply be unable to cope with the practical and procedural difficulties of making an application (e.g. he or she not able to leave the house freely, or to see outsiders on a consistent basis, respond to letters which seek instructions etc). In these circumstances, a victim may instead be able to make his or her views known to a responsible third party initially and for that third party to make the running thereafter by pursuing an application under the Act. Of course, the situation may be even more dire. A victim may actually be imprisoned in his or her home or even be out of the country.

Where possible, it is desirable that any application is made in the victim's own name and any third party application should only be made in the circumstances envisaged in the consultation paper and set out above, i.e.

where the victim's circumstances render it impossible or very difficult to make a free unimpeded application to the Court.

As a starting point, one would not normally expect a third party to make an application against the wishes, or even possibly without the request, of a competent adult. Of course, there is a very fine line between consent and non-consent in these cases. Young adults in a family situation may be subject on occasions not just to threats of violence (or worse) but to emotional pressure, family influence, feelings of guilt etc. The issue of consent to, and request for, the application to be made by a Third Party will have to be carefully addressed in any application before the Court. There is no specific statutory requirement for the Relevant Third Party to obtain the consent of the victim and this would appear to be deliberate. Circumstances may dictate that an emergency application needs to be made. As has been suggested, the victim may be out of the country.

Finally, the safety of the victim must be the paramount concern. Before making any application the Relevant Third Party must ensure that appropriate safety measures have been to be put in place before any application is made.

In summary, therefore, it is the contention of the Association of District Judges that the relevant third party should only make an application when it is not possible for the party to the forced marriage to make the application him or herself. Evidence of this inability must be presented to the court in the application.

2. Are there any other circumstances when it is appropriate for a Third Party to make application on behalf of a child under 16? Are there circumstances when it is not?

There should always be provision for someone or some body to take protective measures on behalf of a child. Again the safety of any child is of the utmost importance and of paramount concern. It will be incumbent with even more force therefore, for the Relevant Third Party to ensure that all appropriate safety measures are in force before making any application.

Whereas the Association is of the view that it would not be appropriate for any third party to make an application against the wishes, or possibly without the request, of a competent adult, the same will not be true in the case of an infant (or indeed a patient). While the ascertainable wishes and feelings will be an important factor, the Association questions whether any child under 16 can be deemed to be able to give free consent to a marriage or consent to an application. This issue will, therefore, have to be addressed with great care in the Application itself. Rule 9.2A of the Family Proceedings Rules permits minors to bring proceedings without a next friend. While not wanting to be

unduly prescriptive at this early stage, it is the view of the Association that the Court should be very slow to permit a child under 16 to make an application under the Act through a Relevant Third Party without a litigation friend. There could be a potential conflict of interest between the Third Party and the Minor/ litigation friend. It is the view of the Association, therefore, that the Third Part must not be the litigation friend. The Court would need to be alert to this potential conflict, identify it at an early stage and provide in the case management directions the mechanism for resolving the conflict.

The provisions of Rule 9.2A Family Proceedings Rules will be relevant in the following (not unlikely) scenario:

A girl aged 15 years 10 months, very intelligent ,and mature , has a full understanding of her situation, is told by her parents that she will be taken to Pakistan the following week with a view to her being married as soon as she reaches the Pakistan legal age of marriage, ie 16. She is aware of the Act and that she can obtain an order from the County Court. She has restricted liberty but is able to go shopping for the afternoon and instead goes to her local County Court and makes an application immediately under the act to give her immediate protection. She feels safe to return home or may stay with friends or a relative as she has a Court order and her family are generally law abiding citizens. She may have at that point assistance and support from a Solicitor, a litigation friend, a relevant third party or no one. **Access to the courts should be made as easy and simple as possible for the victim, whether that is directly or through a relevant third party.** Following the grant of an immediate protective ex parte order, the nature of her representation and the conduct of the litigation will be one of those matters dealt with in the Case Management of the case.

In view of the serious and delicate nature of these matters, ex parte applications may well be common. Clearly any victim will be expected to provide an explanation as to why the application is being sought on an ex parte basis. However, in the appropriate circumstances the victim will be given the confidence that she can walk away from court in the first instance with some form of protection and that the matter is given the seriousness it deserves by the legal system.

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

The obvious answers are the statutory bodies such as Social Services and Cafcass who have general protective functions. Other statutory bodies might be the Home Office, the Foreign and Commonwealth Office and the Police if they so desired. Although, in the view of the Association a decision was quite rightly made not to criminalise these activities and to keep the remedy purely civil, the fact is that these agencies, especially the Forced Marriage Unit, have a great deal of specialised knowledge.

Caution will need to be exercised in relation to voluntary bodies. It may be

significant that only the NSPCC has been authorised to take care proceedings, a comparable protective regime to that now proposed. Voluntary bodies can always involve Social Services, although a) local authorities may require additional direction/funding to make them more ready to take action and b) they may be reluctant to take action without themselves verifying the wishes of the victim. Voluntary bodies might be more prone to take action on a lower threshold of concern than Social Services for various reasons. If voluntary bodies are to be authorised, therefore, there needs to be rigorous vetting of them. This is a protective measure, not a campaigning one (in its implementation).

Having said all that, there are some agencies such as Women's Aid, Asiana Network, Southall Black Sisters and other fully recognised local authority supported voluntary refugees who have by reputation the specialised skill, knowledge and objectivity to present these applications. Subject to the appropriate vetting procedures, any application by such bodies to be recognised as relevant third parties should be sympathetically considered. Their specialised skill may well, in fact, be welcomed by the some Local Authority Social Service Departments already over burdened with "main stream" care work.

The Association has reservations about individual members of the public becoming a relevant third party. Any person who wished to make an application in any individual case would normally be expected to apply for leave. There may be some people working in this sector who could pass an extremely vigorous vetting procedures e.g. Ministers of Religion or Youth workers. There would be clear accountability. In general terms, however, this must be considered very cautiously as vindictive or partisan applications must be prevented.

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

CAFCASS, NSPCC, NYASS and Social Services are the obvious organisations. (Local authorities via schools will be able to have direct access to some of the victims or potential victims). The organisations mentioned in the responses to Question 3 above are all potential relevant third parties dealing with children under 16. Again the observations in Paragraph 3 above are all relevant.

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

The issue of funding needs to be addressed carefully. It is the Association's view that while some applications may turn out to be unopposed, others could be hard fought on all sides, and take up a fair amount of court time (due to cultural issues, with expert evidence, interpreters etc.). On the other hand, the total number of cases brought under the Act is unlikely to be high, especially when compared with the number of injunctions under the general provisions of the Family Law Act 1996. Out of this modest number, the actual cases brought through a Relevant Third Party will be few.

The Association would make five general points:

- a) It is unrealistic and unfair to expect the burden of legal costs and court fees to fall unaided on the shoulders of voluntary bodies, many of which are charities and rely to a large extent on donations from the public.
- b) With regard to Court fees, the Government's policy and strategy of full cost pricing sits uneasily with this type of work.
- c) All the public bodies who are likely to be recognised as relevant third parties continually assert that they have limited funding
- d) The Legal Services Commission also asserts that their resources are strictly limited and therefore their funding of cases has to be rationed.
- e) No third party with a genuine case should be deterred by funding difficulties.

It is the contention of the Association, therefore, that the funding of these limited number of Relevant Third Party applications should be met in one way or another out of public funds. It is outside the limits of this response to suggest the mechanism. It may be by application on merit case by case (i.e. Legal Aid for the Third Parties). It may be by an increase in budgetary allowances, such increases to be made with openness and transparency if not ring fenced. It may be by other means and/or devices or a combination of them all.

6. What safeguards should there be for a victim to ensure that the relevant third party acts in his best interest?

- a) Ideally there should be written consent of the victim before any application is made. This may be available. In some cases it will be totally impractical.
- b) Once an application has been made it should receive immediate judicial consideration. This will always be the case where an

application is made ex parte. If it is not, the file should be placed immediately before a Judge. It is the contention of the Association that this first judicial consideration of the file should normally be by a ticketed Family Circuit or District Judge. Simple logistics tend to dictate that in many courts the District Judge will normally be the Judge most readily available to deal with the case on an emergency basis although in other Courts this may not always be so.

- c) At that point judicial consideration will be given and any directions made to ensure that the Court can be satisfied that the relevant third party is acting in the victim's best interests. For example, the Court might at that point in the exercise of its discretion specifically require the victim to be seen and advised as soon as proceedings have been served and a report made to the court at an early hearing as to the wishes and feelings of the victim. Someone other than the applying third party will be needed.
- d) A welfare report of some sort or another is likely to be ordered in the majority, if not all, contested cases.
- e) In some cases, there may be a need, even in the case of a competent adult, for that person to be separately represented and made a party to the proceedings.
- f) The best safeguard is very tight judicial control of the case by ticketed judges with judicial continuity where the Courts and all the support workers are understanding of, and sensitive to, the cultural issues and the issues between the parties being defined at an early stage.

7. Are there any other safeguards required for a relevant third party acting on behalf of children aged under 16?

- a) It may be appropriate for leave to be required generally for any application by an infant, especially under 16, to make an application whether by a relevant third party or by a litigation friend.
- b) An independent report by Cafcass, the local authority or a Guardian would be inevitable.
- c) Separate representation with a Guardian and/or possibly a child's own independent solicitor would have to be considered.

8. How can we adapt our court administration to meet the needs of those who use the Act?

- a) The Association appreciates that it is the intention to limit the jurisdiction initially to seven centres throughout the country. This is understandable in the first instance especially as those centres have been identified by the Forced Marriage Unit of the Foreign and Commonwealth Office as the centres where the problem is perceived as being the most prevalent. It is the contention of the Association, however, that these centres should be considered as pilot schemes only.

The fact is that potential victims of Forced Marriages are already living in different parts of the country and are not restricted to areas where large numbers of ethnic minorities are residing. Families are likely to disperse more rather than less. It is important therefore that, in due course, most County Courts should be granted the jurisdiction to receive and process applications. Private Law ticketed Family District Judges will be sitting on any working day in most County Courts. All have received considerable training already in the provisions of the Family Law Act 1996 (of which this Act is an extension). It is appreciated that this is a highly sensitive area of the law and if it goes wrong the consequences could be serious. At the first appointment the Court will be concerned to grant protection and define the issues. The Act itself envisages some cases being resolved by undertakings. Each case is fact sensitive. Some cases will need to be transferred to the High Court. Many trials will need to be conducted by experienced Family members of the Circuit Bench. Others will be able to be suitably heard by experienced ticketed District Judges. This would ensure there are as many courts as possible available to hear such applications. It is vital that travel and cost do not deter attendance.

- b) The administrative staff at all relevant courts should be given adequate training, and should ensure that priority is given to any application
- c) There should also be free access to interpreters to be arranged by the court service.
- d) Safety of the victim at court must be considered and this is in and out of the court room. Arrangement should be made that when a victim does have to attend court back office access is available (without giving the impression that the said victim is given early access to the Judge!) and separate waiting areas are available. The old fashioned District Judges' Chambers are unlikely to create a secure safe atmosphere. The use of screens and video links should be available and used where appropriate. The use of official security staff, the presence of bailiffs and the enlisting of a police presence should always be considered
- e) The application procedure should be kept as simple as possible, such as the use of one form, statements in support, and a hearing within a relatively short space of time, Service by the court bailiff expeditiously should be an option in some cases.
- f) The Court does not need a new and different system especially as the intention is not to criminalise behaviour. Indeed, the County Court should in most cases provide the best environment, providing suitable levels of authority without being threatening or intimidating, together with security and safety.

The Association of District Judges welcomes the opportunity to respond. Their experience of dealing with the general provisions of the Family Law Act 1996 is considerable and many sit in areas where ethnic minorities regularly come

to the courts for assistance and protection. The new Act is a significant extension to this legislation and the Association feels well qualified to make a contribution to this consultation paper dealing with the implementation of the Relevant Third Party provisions. It is hoped that these responses will prove helpful.

About you

Please use this section to tell us about yourself.

Full name	District Judge Michael Buckley
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	Chairman of the Family Law Committee of the Association of District Judges.
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If you would like us to acknowledge receipt of your response, please tick this box.	√

If you are representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

This response is sent in behalf of the Association of District Judges.