

Justice Committee

Supplementary Legislative Consent Memorandum on the Anti-social Behaviour, Crime and Policing Bill

Written submission from NHS Lanarkshire Ending Violence and Abuse Services

NHS Lanarkshire Ending Violence and Abuse (EVA) Services are a specialist multi-disciplinary department that works with women who have experienced, or are currently experiencing, violence or abuse.

We have supported women who are currently in forced marriages and those who live with its threat. We are also actively involved in training NHS and partner-agency staff on all aspects of gender-based violence against women and children, including forced marriage.

Acutely aware of the controversies surrounding any legislative changes in relation to forced marriage, and the real risks to safety and well-being for those in such situations, we have given our response to this proposed change serious thought. On balance, we believe that there is a moral imperative to making forced marriage a criminal act; refusing to make such behaviour a criminal offence gives more power to those who seek to abuse women and children's rights by committing this abuse. The reasons for this conclusion are outlined below.

NHS Lanarkshire's Gender-Based Violence Manager, Ann Hayne, manages EVA Services. She is a member of the Board's public protection group linking with child and adult protection themes. This response has been endorsed by the executive lead director for gender-based violence, Dr Harpreet Kohli, Director for Public Health and Health Improvement.

Health Impact

The LCM on this issue has been lodged with the Scottish Parliament by the Cabinet Secretary for Health and Wellbeing¹, which EVA Services welcomes. The 2008 Chief's Executive Letter on Gender-Based Violence made clear that forced marriage is part of the wider spectrum of gender-based violence against women with far-reaching consequences on women's health and well-being, therefore it would seem to be entirely appropriate that such an issue should be highlighted by the Cabinet Secretary for Health and Wellbeing.

Legal Lacuna

The Scottish Government has been pioneering in its approach towards tackling violence against women, recognising for some time that forced marriage is part of a wider spectrum of gender-based violence against women, with gender inequality as both a cause and a consequence of such abuse², it would therefore seem illogical if

¹ <http://www.scottish.parliament.uk/LegislativeConsentMemoranda/AntiSocialBehaviourLCM.pdf>

² Safer lives: Changed Lives <http://www.scotland.gov.uk/Publications/2009/06/02153519/0>

our criminal law remained silent on this issue and did not reflect this strategic gender-based approach to tackling violence against women.

Whilst there are various crimes that could ‘catch’ offenders in relation to forced marriage (such as abduction, kidnap, various child offences etc), introducing a specific offence would make it easier for direct action to be taken against perpetrators, rather than attempting to ‘build’ a case from diverse laws that are not specifically designed to tackle what can be very subtle and manipulative action.

Symbolically, criminalisation also makes it clear that the very act of forcing someone to marry is in itself unacceptable, criminal behaviour in Scottish society. The symbolism of having such behaviour criminalised could act as an inspiration to women and children living with or in fear of forced marriage (as was the case with the criminalisation of rape within marriage, or female genital mutilation) as well as a deterrent to potential perpetrators. Additionally, criminalisation sends a clear message, especially to communities most often affected by such abuse, making an irrefutable stance that such practice is criminal in this jurisdiction.

To continue with the current situation seems to be anomalous: forced marriage is not a criminal act *per se*, but breach of a Forced Marriage Protection Order (FMPO) is a criminal act. In order for prosecution to be brought the woman herself would need to be in a sufficiently safe and empowered position that she could bring evidence against people very close to her (possibly her only support networks). In this situation we do not agree that the existence of forced marriage as a crime would in any way exacerbate the situation and more than the current scheme of requiring her to bring a case for an FMPO³.

We are fully aware of the unintended consequences that can stem from changes in legislation if conducted without due consideration of impact upon the most vulnerable, therefore we would endorse the approach in England and Wales where alongside the change in legislation there is a robust plan in place for supporting women and children involved in forced marriage and its consequences.

Legislative Norms

Internationally, forced marriage is now seen as a crime against humanity, successfully prosecuted in the Special Court for Sierra Leone⁴. Indeed, the only debate internationally around the criminalisation of forced marriage centres on its categorisation (crime against humanity or gender-based⁵) but its existence as a crime *per se* is uncontroversial. We can therefore see there is a global trend towards criminalisation.

³ In line with the ‘Responding to Forced Marriage: Multiagency Practice Guidelines’ issued by the Scottish Government, we recognise that men, women and children can experience forced marriage, but the overwhelming majority of those involved are female, therefore we use the pronoun ‘she’ throughout this document.

⁴ In 2005 the first charge of forced marriage was brought by the Special Court for Sierra Leone, and in 2008 it reached successful prosecution in [Prosecutor v. Brima, Kamara, and Kanu](#) where the court formally recognized forced marriage as a crime against humanity as an “other inhumane act.”

⁵ <http://opiniojuris.org/2013/07/31/emerging-voices-taking-forced-marriage-out-of-the-other-inhumane-acts-box/>

It would seem to be inconsistent that Scotland would refuse to criminalise such behaviour while other jurisdictions in the UK and Europe have moved to make it a criminal offence, especially given that Scotland is heralded for its strong position on other forms of gender-based violence. Indeed, it is our view that the change to the law in England and Wales makes change here a matter of equal access to justice and protection from abuse in the United Kingdom – it would seem inequitable that a woman living in East Kilbride could not seek the same policing response for this matter as a woman from Manchester. Moreover, the message sent to potential perpetrators and their communities should be no less stringent here than in England and Wales: if we as a society view this behaviour to be criminal, the law should reflect that.

Comment on previous consultations

This proposal calling for evidence from stakeholders on the subject of potential criminalisation is the first to do so for nearly a decade. Eight years ago, responses to the Scottish consultation on the issue of forced marriage were closely divided: 36.4% were in favour of creating a criminal offence, and 39.4% of respondents were against.

Since then, much has changed, with the creation of Forced Marriage Protection Orders, international cases, changes to neighbouring jurisdictions, and several national campaigns on the issue. The 2009 consultation questioned respondents **only** on their views about the introduction of specific **civil** remedies in relation to forced marriage, where, overwhelmingly, respondents were keen to see legislative change (88% of the respondents were in favour of specific civil remedies) which led to the introduction of the Forced Marriage (Civil Protection) (Scotland) Act 2011⁶ but there was no specific question on the matter of criminalisation.

In 2012 the response to Home Office consultation on the issue of criminalising forced marriage found that the majority of respondents in England and Wales were keen to see forced marriage criminalised (54% were in favour, and 37% against), and there was then a legislative change there to make forced marriage a criminal offence.⁷

Compliance with the “Istanbul Convention”

Making forced marriage a criminal offence would also bring the Scottish jurisdiction into line with British commitments to the Istanbul Convention.⁸ It is our understanding that as the UK is now a signatory State to the 2011 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (“the Istanbul Convention”), we must ensure that we meet the requirements laid down in Article 37, namely to criminalise forced marriage. Having welcomed the UK signing

³[http://www.scottish.parliament.uk/S3_Bills/Forced%20Marriage%20etc.%20\(Protection%20and%20Jurisdiction\)%20\(Scotland\)%20Bill/b53s3-introd-pm.pdf](http://www.scottish.parliament.uk/S3_Bills/Forced%20Marriage%20etc.%20(Protection%20and%20Jurisdiction)%20(Scotland)%20Bill/b53s3-introd-pm.pdf)

⁷<https://www.gov.uk/government/consultations/forced-marriage-consultation>

⁸ 2011 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, known as the ‘Istanbul Convention’, see Art 37.

this landmark European treaty, we wholly endorse any actions that can be taken to ensure compliance with its terms.

Safety

At NHS Lanarkshire EVA Services we have worked with women who have experienced forced marriage, and we are acutely aware of the myriad challenges, cultural pressures, isolation and risks to safety for those involved. Risk assessment and safety planning are our priorities. Our position is that barriers for women reporting to the police would be just as challenging as those faced by women considering applying for Forced Marriage Protection Orders and would be taken into account in any safety plan.

We can see no further risk posed to women and children by the criminalisation of forced marriage than the current risks posed by FMPOs and believe that, as with the criminalisation of female genital mutilation, any risks are outweighed by the practical and symbolic importance of criminalising this form of violence against women and children.

Conclusion

As was the case with the change to the law in relation to rape within marriage, or female genital mutilation, this change might not mean that our courts see a deluge of cases in relation to forced marriage, as the constraints underpinning women's access to justice are strong, but it would mean that women and children who do seek redress for this form of abuse would have the protection of the law and potential perpetrators would see that such behaviour is simply not tolerated in this jurisdiction.

As highlighted by Mix Together in their response to the consultation on criminalisation of forced marriage in England and Wales, *'Attitudes take a long time to change but it is our belief that criminalisation of forced marriage sends a clear signal, not only to the perpetrators, but also to victims that this is unacceptable and highly damaging.'*⁹

NHS Lanarkshire EVA Services also consider this as part of an overarching package of benefits to Scottish society as a whole. By sending women, children, perpetrators and the wider community the message that forced marriage, as part of the spectrum of gender-based violence, is so abusive as to be deemed criminal practice, this move will contribute to societal change and increase the future safety and well-being of all Scottish citizens.

EVA Services, NHS Lanarkshire
29 November 2013

⁹Forced marriage – a consultation Summary of responses:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/157829/forced-marriage-response.pdf