

Amendment for House of Commons Public Bill Committee stage of the Forced Marriage (Civil Protection) Bill [HL]

In addition to the anti-abuse, learning disabilities charities Respond, the Ann Craft Trust and VOICE UK, the Disability Rights Commission has indicated that it supports this amendment as a reasonable adjustment to allow people with disabilities to give evidence in forced marriage cases.

Jo Swinson

Clause 1, page 1, line 18, at end insert –

(3A) In determining the person’s wishes and feelings in pursuance of subsection (2), the court may direct that the examination of a witness must take place in the presence of a person approved by the court for the purposes of this section (“an intermediary”).

(3B) In this section “intermediary” has the meaning set out in section 29 of the Youth Justice and Criminal Evidence Act 1999 (c.23).’.

Purpose of the Amendment

The purpose of the amendment is to give effect to the requirement on a court that it have regard to the wishes and feelings of the person to be protected in deciding whether to make a forced marriage protection order.

Reasons for the Amendment

People with learning disabilities and children are forced into marriage through harassment, trickery, assault, kidnapping and blackmail. The forced marriage is also often a precursor to domestic violence including rape. The motives behind forcing people with learning disabilities to marry include an effort to find a carer, a means of obtaining a visa and a belief that marriage will “cure” learning disabilities.

The Bill can be a vital tool in preventing these forced marriages and tackling their aftermath. The requirement that a court have regard to the wishes and feelings of a victim in deciding whether to issue a forced marriage protection order is just and an important safeguard against paternalistic applications by third parties. To give affect to this requirement, it is important that courts are able to determine the wishes and feelings of people with learning disabilities and children.

Giving evidence in court can be a distressing and traumatic experience for people with learning disabilities and children. People with learning disabilities can have difficulty recalling information while their language needs can mean they have difficulty understanding and responding to questions. Some people with learning disabilities have little or no concept of time. In addition, people with learning disabilities are more susceptible to leading questions and are more likely to acquiesce during cross-examination than the general population.

The Government recognised that people with learning disabilities and children need extra assistance to give their best evidence in court when it introduced special measures through the Youth Justice and Criminal Evidence Act 1999. An intermediary is one of these special measures – a go-between selected for their specialist skills and experience as speech and language therapists, psychologists,

teachers, social workers and health professionals. They help people with learning disabilities and children understand questions in court and assist them in communicating their answers. Intermediaries brief courts on how someone communicates, the types of questions to avoid, how long they will take to answer and their levels of understanding. An intermediary owes their duties to the court and to justice.

In announcing the national roll-out of the scheme, Justice Minister Gerry Sutcliffe stated:

“The use of intermediaries has made the complexities of the justice process more accessible to some of the most vulnerable people in society.”

A Ministry of Justice study also demonstrated the value of intermediaries:

“Feedback from witnesses and carers in trial cases was uniformly enthusiastic. Carers felt that intermediaries not only facilitated communication but also helped witnesses cope with the stress of giving evidence. Appreciation of the role was also almost unanimous across the judiciary and other criminal justice personnel ...”

In the opinion of the criminal justice professionals consulted, at least half of the cases that reached trial would not have reached the trial stage without the involvement of an intermediary. This evaluation found that intermediaries ensured *“witnesses understood everything said to them, including explanations and instructions.”* It also found potential cost savings as intermediaries kept witnesses focused, reducing the time needed to question them.

Special measures as set out in the Youth Justice and Criminal Evidence Act 1999 are only available in criminal cases. In civil cases, such as those dealing with applications for forced marriage protection orders, judges have an inherent power to make orders and give directions for the provision of assistance to witnesses in giving evidence. A judge could order the use of an intermediary to assist a person with learning disabilities or a child. However, some members of the legal profession misunderstand the role of intermediaries, viewing them as encroaching on the traditional roles of lawyers and judges, and so are either reluctant to use them or are obstructive when intermediaries are used. A Home Office survey of the police, CPS, Witness Service and Crown Courts found that:

“Approximately one-third of respondents also said that either prosecution counsel or the judiciary were resistant to special measures and preferred evidence to be given in the traditional way with the witness receiving no assistance.”

The Ministry of Justice evaluation of intermediaries found that:

“...while those with direct experience of intermediaries were almost all very positive, some others encountered pre-judged or misunderstood the intermediary role.”

As intermediaries have been little used in civil cases (we are aware of two instances of their use in the family courts), they may be perceived simply as criminal justice measures and misconceptions of their role may be more likely amongst those dealing with forced marriage protection order cases.

This amendment would address this problem by making clear the existing power of courts hearing civil cases to utilise intermediaries. It would also make clear to victims, and those assisting them, that they may ask a court for the assistance of an intermediary.

In addition, the amendment would ensure parity. If a person is prosecuted for kidnapping and assault in an effort to force a person with learning disabilities or a child into marriage, their victim will have ready access to an intermediary. If that same victim pursues an application for a forced marriage protection order to prevent further harm to them, intermediary assistance may be harder to obtain.

For more information, please contact Robin Van den Hende, Policy and Campaigns Officer, VOICE UK, the Ann Craft Trust and Respond, 020 7874 5486, robin.vandenhende@respond.org.uk