**FGM: Bad-faith actors and unintended consequences**

**What is FGM?**

Female genital mutilation (FGM) is a procedure performed on women and girls to injure or change their genitalia. The operation has no medical benefits and causes significant emotional trauma and distress to the victim. FGM compromises women’s and girls’ physical health, increases the risk of infection, prolonged chronic pain, infertility, complications during childbirth, heightens risk of HIV transmission, and even death. Some forms of FGM result in women being unable to derive pleasure from sexual intercourse, or sexual intercourse being extremely painful.

FGM is practised for a range of reasons across countries and cultures. It is sometimes practised because it is believed necessary to ensure a future marriage or uphold a family’s “honour”. Although no religious scriptures require it, some cite religious grounds in advocating for FGM.

The common denominator is that FGM occurs in cultural settings where gender inequality is deeply entrenched. Consequently, FGM is often but one of the many mechanisms through which women’s sexuality and bodily autonomy are curbed and regulated. FGM is one of the core strands of violence against women and girls (VAWG) recognised by the United Nations, which also includes domestic abuse; forced marriage; so-called honour-based violence; rape and sexual offences; prostitution; human trafficking; child abuse; and the production of child sexual exploitation imagery and footage. A 2008 UN interagency statement defined FGM as a violation of human rights, a form of discrimination based on gender, and a form of violence against girls (WHO,2008).

The total number of women and girls who have been subjected to FGM worldwide is unknown. However, it is understood by UNICEF that at least 200 million girls and women aged 15-49 from 31 countries have undergone FGM. While there has been much progress in eradicating the practice, in some countries, FGM remains commonplace. For example, over 90 per cent of women and girls in Guinea and Somalia undergo some form of FGM (UNICEF global databases, 2022).

FGM also occurs in the UK, where it is estimated that approximately 60,000 girls aged 0-14 were born in England and Wales to mothers who had undergone FGM (Macfarlane A, Dorkenoo E, 2015). UK communities most at risk of FGM include Kenyan, Somali, Sudanese, Sierra Leonean, Egyptian, Nigerian, and Eritrean. Non-African communities that practise FGM include Yemeni, Afghani, Kurdish, Indonesian and Pakistani.

**FGM and the Law**

In September 1985, the Prohibition of Female Circumcision Act1985 came into force, making FGM a specific offence in the UK. In 2003 this was repealed and replaced by the Female Genital Mutilation Act 2003, section 4 of which extends sections 1 to 3 to extra-territorial acts so that it is an offence for a UK national or permanent UK resident to:

1. assist a girl in performing FGM on herself outside the UK;
2. and assist (from outside the UK) a non-UK national or resident to carry out FGM outside the UK on a UK national or permanent UK resident.

Amendments inserted by the Serious Crime Act 2015 introduced female genital mutilation protection orders (FGMPOs), which are civil injunctions designed to protect a girl against future genital mutilation, or to protect a girl against who has been the subject of mutilation already.

The Act provides lifelong anonymity to any person alleged to be a victim of an offence under the Act (Section 4A and Schedule 1 of the Act).

The court may use a range of protective mechanisms when granting FGMPOs. Some examples are:

* The Respondent must not take the Applicant out of a specific area.
* The Respondent must not “harass, pester, or molest” the Applicant, directly or indirectly.
* The Respondent must halt any arrangements for the procedure of FGM to be carried out on the Applicant.
* The Respondent must not arrange for any medical or surgical procedures to be carried out on the Applicant’s person.

Provision is also made for ‘relevant’ third parties to apply for an FGMPO without the leave of the court (subparagraph 2(7) of Part 1 to Schedule 2 of the Act). This can include local authorities, enabling them to intervene swiftly when required to protect potential victims.

**NCC v OA & Anor – What was the case about?**

The case of [Nottingham County Council v OA & Anor [2022] EWFC 102 (17 August 2022)](https://caselaw.nationalarchives.gov.uk/ewfc/2022/102) concerns an application for an FGMPO by the local authority, supported by the mother, in respect of her baby daughter.

The mother is a highly educated Egyptian lawyer and lecturer. Her English, although not perfect, is good, and she communicates and can be communicated with effectively in English. The mother arrived in the UK on a spousal visa, where she initially lived with her husband, who works as a truck driver. Both parents’ families are from large towns in Northern Egypt, 30 miles or so away from each other.

In late summer of 2020, the mother, who was then in the early stages of pregnancy, went to Egypt to visit family, where she stayed for several months. Her husband was unhappy about this because he was concerned about the risks of Covid-19, and he felt that it was his wife’s duty to remain by his side. Angry, he pronounced talaq over the telephone, which in Islamic law is a divorce effected by the husband’s enunciation of the word ‘talaq’. When the mother eventually returned home, the two remained under the same roof somewhat acrimoniously for several weeks.

The father then told the mother that he had met and fallen in love with somebody else. He kept the mother short of money, and it is this and the proclamation of love for the other woman which the mother said constituted financial and emotional abuse. In December, the mother left the home and moved to a women’s refuge.

While in the refuge, the mother began telling professionals that she feared her daughter might be subjected to FGM at the hands of her husband’s extended family or possibly her brother. While she did not argue her husband supported the family in this, she feared he would be unable to stand up to them and adequately safeguard their daughter. These fears were repeated to numerous refuge workers, domestic abuse workers, and two different local authorities.

In January 2021, Lancashire local authority children’s social care department completed an FGM assessment based on national FGM centre standards that identified various risk factors. In summary, that there was a high level of influence on the family by pro-FGM elders, with a risk they may remove the child from the jurisdiction to perform FGM, which was still actively practised in the parents’ community or family, and a trusted adult had stated that they want FGM performed on the child.

The mother provided all information without the father being contacted for comment. On this basis, in March 2021, the local authority issued an application for an FGMPO.

In June 2021, the mother was granted indefinite leave to remain in the UK. By August 2021, her position had drastically altered in that she claimed there was no risk of FGM at all, and everything she was alleged to have said to professionals was either mistranslated or miscommunicated by others accidentally or maliciously.

**The Judgment**

Mr Justice Cohen discharged the application and the orders already made. He also made a contact order which the parties agreed would commence immediately. The mother was ordered to inform the local authority, her GP, and the father of her home address as soon as she left the refuge.

In his judgment, Mr Justice Judge Cohen raised critical concerns regarding the mother’s version of events.

First, the mother spoke and understood English well enough that she felt confident in firing her legal counsel and representing herself in court. Despite this, she said the local authority had mistranslated her when she expressed her concerns about FGM and the danger posed by her husband’s family. The Judge accepted there may have been some mistranslations but did not find these occurred to the extent of accounting for the vast differences between her former and current position.

Second, the mother declined to use the protective screens provided during the hearing, commonly used by survivors of abuse in court. This cast further doubt on her story that she feared her husband to the extent that she needed to reside in a domestic abuse refuge.

Third, the mother maintained that the local authority had pressured her into making false allegations and said that a support worker had advised her to talk about FGM to improve her chances of being granted indefinite leave to remain. She also blamed a friend for sending messages to the local authority without her knowledge, although she could not present this person to the court to give evidence.

In assessing the likelihood that the local authority had an ulterior motive for making up a non-existent risk, considering the chronology of events, particularly the timing of the mother’s retraction, the Judge was clear that the mother’s case did not add up. He concluded that at some point, the mother had been advised (not by the local authority) that the best way to secure indefinite leave to remain in the UK was to present as a victim of domestic abuse and then make allegations of FGM.

The father, who had not seen his daughter since birth, maintained that there was no history of FGM in his family, who posed no risk to his child. Counsel for the father pointed out that while FGM is practised in Egypt, a closer analysis of the statistics shows vast regional and cultural differences in the extent to which an Egyptian child may be at risk. For example, the father’s family were from a large cosmopolitan city where FGM is much less common than in rural areas. Furthermore, although he is a truck driver, he is from a middle-class professional background, a setting where FGM is also less likely to occur. These contextual points indicate a much-reduced risk of FGM by the family than the mother put forward. It might be said that she relied upon the well-meaning ignorance of western professionals about these regional and class-based nuances in enacting her scheme.

Mr Justice Cohen was vocal throughout his judgment as to the correctness of the local authority in making the application it did, based on the information provided. They would have undoubtedly played a central protective role in this child’s life if the information had been accurate.

As he concluded, the mother had been dishonest with professionals. She was clearly very much alive to the perceived vulnerabilities of women and girls of her ethnic group, which she exploited for her own purposes. Consequently, the father had been unjustly deprived of the opportunity to bond with his daughter during the first year of her life.

Because of the anonymity clauses within the FGM Act, the only cases concerning FGM that are usually published are those where the Judge is confident there is no risk of FGM (e.g., abuse of process [cases](https://transparencyproject.org.uk/re-k-when-a-forced-marriage-protection-order-application-isnt-all-it-seems/) such as this). It is essential that when reading these judgments, we do so with acute awareness of the many invisible applications where FGMPOs are granted.

Since their introduction in July 2015, there have been 529 applications for FGMPOs, resulting in 751 orders to the end of March 2022 ([Quarterly Family Law statistics 2022](https://www.gov.uk/government/statistics/family-court-statistics-quarterly-january-to-march-2022/family-court-statistics-quarterly-january-to-march-2022#forced-marriage-protection-orders-and-female-genital-mutilation-protection-orders)). It is often the case that the number of orders made is greater than the number of applications. This is because it is not uncommon for multiple orders to be granted per case. It may also be that one application covers more than one person, and an order is granted in respect of each.

English law-makers have dedicated much thought and time in manifesting a legal framework that best protects women and girls. However, no system is without vulnerabilities, and abuse of process is a risk in any set of proceedings. Although sub-optimal, it is preferable to have a system in which a few bad-faith actors slip through the net to be held to account in court, rather than a system in which women are disbelieved and children are seriously harmed as a result. Here, ultimately, through the process of scrutiny at trial, the court was able to reach factual conclusions that led to the inevitable decision that a FGMPO was not justified.