



**MS JUSTICE RUSSELL**

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Neutral Citation Number: [2017] EWHC 2898 (Fam)

Case No: FD16F07013

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**  
**IN THE MATTER OF THE CHILDREN ACT 1989**  
**IN THE MATTER OF THE SENIOR COURTS ACT 1981**  
**AND IN THE MATTER OF THE FEMALE GENITAL MUTILATION ACT 2003**  
**AND IN THE MATTER OF X (A Girl) (born on 22<sup>nd</sup> August 2016)**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 15/11/2017

**Before:**

**MS JUSTICE RUSSELL**

-----  
**Between:**

**Hertfordshire County Council**

**and**

**M**

**and**

**F**

**and**

**X**

**(A Child by her guardian)**

**Applicant**

**1<sup>st</sup> Respondent**

**2<sup>nd</sup> Respondent**

**3<sup>rd</sup> Respondent**

**James Holmes** (instructed by Hertfordshire CC) for the **Local Authority**  
**Sharon Love** (instructed by **Duncan Lewis**) for the **1<sup>st</sup> Respondent**  
**Alistair Perkins** (instructed by **Dawson Cornwell**) for the **2<sup>nd</sup> Respondent**  
**Victoria Green** (instructed by **Cafcass Legal**) for the **3<sup>rd</sup> Respondent**  
Hearing dates: 24<sup>th</sup> to 16<sup>th</sup> May/30<sup>th</sup> August and 8<sup>th</sup> September 2017

-----

## **Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

**Re X (A Child) (Female Genital Mutilation Protection  
Order) (Restrictions on Travel) [2017]**

## **The Honourable Ms Justice Russell DBE:**

### **Introduction**

1. The child at the centre of this case is X, an infant of 14 months at the time of writing this judgment. She was born in England to a white English mother (M) while her Egyptian father (F) had remained in Egypt where her parents met. The case arose as a result of concerns about the possibility of X suffering female genital mutilation (FGM) should she be taken to Egypt.
2. The exact circumstances in which this concern was raised with the local authority are a matter of dispute, to which I shall return later, but it was as a result of a conversation which took place during a home visit by the Health Visitor shortly after X came home with her mother from her birth in hospital and when the issue of FGM was raised by M. The local authority issued these proceedings after a referral by the Health Visitor to safeguard X and to prevent any likelihood of mutilation by seeking orders preventing her mother or anyone else from taking X to Egypt. The local authority (the applicant bringing this case) are supported by the child's guardian and apply for the Female Genital Mutilation Protection Orders (FGMPO) pursuant to Schedule 2 of the Female Genital Mutilation Act (FGMA) 2003 which are currently in force to remain in place until X reaches her sixteenth birthday. This is opposed by both M and F.

### **Background and chronology**

3. F was born to Egyptian parents in Egypt on 10<sup>th</sup> February 1986; he is thirty-one at the time of writing this judgment. The court has limited evidence before it regarding the details of his upbringing and family. He is clearly a well-educated man who speaks good English. He had the assistance of an interpreter throughout the trial, which he attended by way of video link from Egypt. He works in the tourist industry and lives several hours' travel away from his parents and his family home. He has siblings including two sisters, one of whom is married with a daughter; neither gave evidence in these proceedings but both his parents gave evidence, also by video link from Egypt. There was some evidence before the court emanating from M, that F's mother (who I shall refer to as PGM) was not happy with her son's marriage to M, but that she had come to accept it on meeting M. The PGM had been subjected to FGM as a child. It is F's case that FGM is not carried out in his family and that neither of his sisters were mutilated as children. It is not known whether his sister's child has been subjected to FGM.
4. M was born in England to white English parents on 20<sup>th</sup> June 1991; she is twenty-six at the time this judgment was written. Like many young people she has tried out different lifestyles and in her early twenties converted to Islam. M met F during a trip to Egypt in January 2013. She remained in Egypt for a few months before coming back to England. M went back to Egypt in January 2014 by which time she had converted to Islam. As with F there is limited evidence before the court in respect of her background and her family; but for the purpose of this judgment the maternal family background is less pertinent as the risk for X of FGM emanates from the paternal family.

Approved Judgment

5. There have never been any concerns about M's ability to look after X well. M and X have been visited at home regularly by social workers and nothing has ever indicated other than that X is thriving in her mother's care. At the outset of this case M had said that she wanted to travel to Egypt with X to stay for some time and that then she and F intended to move to Malta and live as a family there for a few years. M's position now is that she intends to remain living in England with X but that she wants to visit Egypt with X on holiday for a period of no more than a few weeks.
6. M and F met in Egypt in January 2013 when she was working in a hotel; F was working in another hotel and they met through mutual friends. Neither M nor F have given much by way of detail about their relationship, marriage or the time that they spent together in Egypt. The court is not aware of the kind of marriage contracted in May 2014 and whether M was required to convert to Islam to marry F. From what she told the police officer who went to see her on Monday 14<sup>th</sup> November 2016 it would seem that M is unsure herself about whether the marriage was legal or not. The police officer records, in his (unchallenged) statement, that they had attended a government building to get married and then had a party. The court is aware that Egyptian men can and do enter into more than one marriage at the same time. It would seem that that M and F met in H where F works in the tourist industry, which is some distance from his family home.
7. At some point during their relationship, probably early on in 2013, F and M had a conversation about FGM which arose regarding her own physical appearance when F told M that he had believed she had undergone FGM. In his statement to the court F said that he had never assumed that M had undergone FGM. In her oral evidence M said that it concerned her that F had denied it and repeated that he had said to her that he thought she had; told the court "*he is wrong to say he had never assumed [I had] FGM.*" Later in 2015 they had discussed FGM regarding children which was when F had said that FGM should be legalised and undertaken in hospitals in a safe environment. He said that his sisters had undergone FGM. They did not discuss why he believed this to be the case (in respect of his sisters) at the time but, during this case, the paternal family sought to deny that F's sisters were subjected to FGM, flatly contradicting what F and told M. M said in her oral evidence that a few days prior to the Health Visitor's home visit she and F had discussed FGM but she denied that F had said that his family were expecting X to undergo FGM (as the Health Visitor had said in her evidence). M said that her alarm had been caused by learning of the prevalence of FGM in Egypt and that she had found out more about it after speaking to her hairdresser who had been mutilated herself.
8. It is clear from the evidence that M does not have a close relationship with the paternal family and, from her own oral evidence, that she is worried about being able to trust the paternal grandfather (PGF) in particular. The evidence of M and F and the paternal grandparents about the time M spent with them, which would have provided them with the opportunity to get to know each other, was conflicting, contradictory and confusing. M said that they spent several days together when they married, both before and after the wedding; the PGM said that they left straight after the wedding and did not stay long. In her oral evidence M said that she was "*very surprised*" that the paternal grandparents said that they had only met her twice; it was her evidence that they had met on four or, in the case of the PGF, five occasions. M told the court that their evidence about this had raised concerns for her as she was "*worried they*

*were saying [what they thought] the court wanted to hear...” and that this was “why I was concerned as [they] may say other things...yes, it makes me worried about how much I can trust them.”*

9. The length of time M spent with the paternal family and whether they came to visit the couple where they were living in Egypt or not is not the primary issue here, as the court is concerned with X’s safety should she be taken there now or in the future. It is an undisputed fact that M cannot speak Egyptian Arabic and that neither of the paternal grandparents can speak English. M has accepted in her oral evidence that it would be difficult for her to protect X if the family were discussing FGM being carried out on her as she would not know what was being said; added to that is the PGF professed belief (which he told the court in his oral evidence) that it is neither necessary or desirable to tell women within the family the decisions that have been taken. He demonstrated this by taking his daughters to be medically examined without reference to the PGM who did not know that this had happened. This deceit clearly shook M who said as much in her oral evidence.
10. When X was conceived the parents were living in A in Egypt. M travelled back to the UK in January 2016; she found out that she was pregnant once back in England and had the baby here. M has said that F was not able to accompany her because of his immigration status, although it is not clear what application was made, if any, for a visa to allow him to be with his wife when she gave birth. M also told the police officer that F coming over to England was not possible because of “finances”. X was born on 22<sup>nd</sup> August 2016 in hospital in the South of England. M had intended to travel back to Egypt with the baby shortly after her birth but once the baby was home, during a follow up visit on 10<sup>th</sup> November 2016 by the Health Visitor (KA) concerns about FGM were raised by M. As referred to above, M later disputed what she was reported to have said about the paternal family expecting X to undergo FGM to the professionals who visited her at the time; these professionals were the Health Visitor, the social worker, Ms Oni, from whom I heard and whose evidence was challenged and the police officer, Mr Conder, whose evidence was not challenged.
11. It is of note that by then section 5B of the FGMA 2003 was in force. The section imposes a duty on professionals, including health and care workers, teachers and social workers, to report to the police if, during the course of their work, they discover that an offence of FGM appears to have been carried out. Although there was, and is, no suggestion that such an offence occurred there had been a campaign to raise awareness and instructions as to the procedure to be followed for the “*Mandatory reporting of female genital mutilation: procedural information*” was published by the Home Office and Department for Education in December 2016. In addition to reporting possible FGM, it is public policy that child protection agencies are actively to prevent FGM whenever possible.
12. According to the Health Visitor (KA), who referred the matter to the local authority, M had brought up the subject of FGM and said that X's father's family in Egypt are expecting X to undergo FGM during her stay in Egypt. M said that she told F that FGM was illegal in the UK and of the implications for her should it be carried out as he was unaware that it was illegal in the UK and had said that all the females in his family had undergone FGM. According to her evidence, F had not responded to M’s worries straight away but later did so had said that, X did not have to undergo FGM,

then. The court understood for M's evidence F and M were in regular electronic communication which took various forms and was not limited to speaking to each other by phone. M told KA that she and X were planning to go to Egypt and the flight tickets have been booked for 31<sup>st</sup> December 2016. Following the referral X and her mother were visited at home on 14<sup>th</sup> November 2016 by a specialist FGM social worker Mary Oni and DC Adam Condor from the Child Abuse Investigation Team (CAIT). M confirmed that she had booked one way tickets for herself and X to travel to Egypt on 31<sup>st</sup> December 2016 and that she had planned to remain in the country for six months. According to Ms Oni M said that she was unsure of the position of the extended paternal family regarding X being subjected to FGM. M told them that F felt that FGM should be legalized and carried out in hospitals but has said that X would not be subjected to FGM if she travelled to Egypt. Ms Oni's evidence was that M told her and the police officer that F had said to her that X would not be subjected to FGM if she travels to Egypt because of their understanding that M may be imprisoned in the UK as a result.

13. In the unchallenged statement of the police officer he said that M had told them that F was surprised to find out that M had not undergone FGM herself and that he thought that every girl had done; and that he believed that it should be legalised and performed in hospitals. M had said that F had gone against his own family to marry her and that the PGM had not spoken to him for five months because of what he'd done. M was confident that she could protect X and said she would never leave her alone within the family; if necessary she would telephone the Embassy and the police and lock herself in a room with X. She said that had considered telling the family that FGM had already taken place. The police officer's statement records M as becoming visibly upset at the possibility of X not having contact with F and the family in Egypt. He said, "*I asked [M] if she would find it easier telling [F] that it is the professionals have stopped her coming and she said 'Yes'.*" The officer's statement concluded both he and Ms Oni had concerns for X's safety in Egypt and that she would be at a significant risk of being subjected to FGM even though her mother was against it; this assessment was based on the facts that FGM was "severely prevalent" and that F and his family were supportive of the procedure and believe that it should be legalised. DC Conder noted that overall M engaged well, had appeared to be acting appropriately and had conducted "*much better than average*" research on the subject. The court agrees with these last observations in respect of M's approach to FGM.
14. On a further visit by Ms Oni, on 21<sup>st</sup> November 2016, M was reported to have said that she decided to still travel to Egypt but for three weeks as opposed to six months. M said that her husband had spoken with his mother who had assured him that X would not be subjected to FGM. M had explained that she had not spoken to her mother-in-law directly as there is no phone or internet access where MGM lives and that she does not speak English. On 23<sup>rd</sup> November 2016, an all ports alert was requested and completed by the Police. On 25<sup>th</sup> November 2016, a FGMPO and passport orders were granted in respect of X in the High Court by Keehan J. The order was served on M on 26<sup>th</sup> November 2016. The passport order was executed and the passports of M and X were taken and held by the Tipstaff.
15. On 29<sup>th</sup> November 2016 F was spoken to by the social worker. It was reported that F denied any report that he and his family members suggested that X would undergo FGM when she travelled to Egypt, even before being told by M that the practice is

- illegal in the United Kingdom and could lead to imprisonment. F denied any report that he had suggested that FGM should be legalised to allow the procedure to be performed in hospitals; he denied having said that FGM is practiced in his community. F denied that he had a conversation with M (which she had reported and repeated in her oral evidence to me) regarding a teenager who died as a consequence of FGM in 2015. F denied any report by M that he had initially been under the impression that M had herself been subjected to FGM.
16. On the same date, the F's father (the PGF) reportedly told the local authority that FGM is "*not a big issue*". He said that the Egyptian Government had "*stopped*" FGM some 12 to 15 years ago and there is a financial penalty in place (in fact it was made illegal in 2008 which was eight years previously). The PGF said that he has two daughters who have not undergone FGM, and that no female member of his family young or old has ever undergone FGM. He said he wished to see X and that she would not be subjected to the FGM if she travelled to Egypt.
  17. On 30<sup>th</sup> November 2016, the PGM told the local authority that FGM was carried out and practiced in her family, but she said that her daughters and granddaughter have not undergone FGM. She said that she had herself has been "circumcised" but this was completed many years ago and at the time, females who were not circumcised were considered to be "Haram". The PGM said that FGM is now forbidden in Egypt generally as a result of girls dying; and said that families were beating girls to enforce circumcision and this had resulted in deaths and that it is now completely banned. The PGM said that she and M share mutual respect for each other, and that M and X are held in high esteem in the family.
  18. On 1<sup>st</sup> December 2016, there was a further hearing before Bodey J in respect of the FGMPO attended by M, her own mother and the baby. The orders were extended to the next hearing on 2<sup>nd</sup> February 2017. A Child and Family Assessment was completed on 19<sup>th</sup> December 2016, which was served on M's legal team. The assessment concluded that there was no change in the parents' attitude and circumstances with regards to their capacity to reduce the risk of FGM to X. On 20<sup>th</sup> January 2017, there was a Child in Need visit to X undertaken jointly by the social worker and Health Visitor (KA); there were no concerns noted or reported about X's welfare. The baby was thriving and KA reported that X was on the 97<sup>th</sup> centile. F had applied to visit the UK and had his application for his visa refused; both the social worker and health visitor were told that the decision about visa application was being appealed. M reported that her MP has written to the home secretary in support of the appeal. It later transpired that F had applied for the wrong kind of visa.
  19. On the 9<sup>th</sup> February, the case came before Theis J in the Royal Courts of Justice when directions were given and the FGMPO remained in place; extended until the 21<sup>st</sup> February 2017. On 14<sup>th</sup> February 2017, there was a Child in Need meeting held at a local authority children's centre; X was present and as before there was no concern regarding her presentation and no concerns raised by any agency in respect of her wellbeing, care or welfare. There was no update regarding F's visa appeal. The social worker, Ms Masanga, had completed the previous Child in Need visit at home on 13<sup>th</sup> February 2017 and had found her to be in good health. The local authority had been trying to involve UNICEF in Egypt with a view to carrying out safeguarding or child protection work with the paternal family but no update had been provided so that an

Approved Judgment

independent social worker (ISW) was being considered by the local authority as an alternative resource.

20. Enquiries were made by the local authority of the Forced Marriage Unit/Consular Directorate to see if the Foreign Commonwealth Office in conjunction with the British Consulate in Egypt were able to provide any safety measures should X travel to Egypt to see her father in light of the risks of FGM and, if so, if there were any conditions that need to be met. A Ms Lott advised that a FGMPO would be needed to permit travel but with the following requests: proof of a return ticket; cooperation from the family to X being examined by a medical professional in the UK; a full address and telephone number of where they were to stay in the Egypt; an agreement to comply with a requirement that X would be brought to the British Embassy to be seen in person, where they may call social services in the UK. The FCO at Post might be able to take hold of M and X's passports when they arrive in Egypt and return these to them on the day they are due to fly back, which would be advisable if there is a risk that F or the paternal family may take the child's passport.
21. On 22<sup>nd</sup> February 2017, the case came back before Theis J. X was made a party to the proceedings; directions were given as to the liaison with the Egyptian authorities and Consulate as to the acceptability and logistical preparation needed before an ISW could travel to Egypt to carry out any work there. The case was allocated to me for case management and listed for final hearing in May 2017 for four days. On 28<sup>th</sup> February 2017 enquiries were made by the LA, through Ms Lott at Forced Marriage Unit, to find out if they were able to provide advice and information regarding an ISW travelling to Egypt to meet the paternal family.
22. On 1<sup>st</sup> March 2017 enquiries were made by the LA through Children and Families Across Borders or Inter-Country Social Services (CFAB), to find out if their partner agency in Egypt would be able to undertake a Risk Assessment in respect of the paternal family in Egypt. CFAB advised the local authority that the assessment would take between five and seven working days as the information required for the assessment was already available, but that the allocated caseworker at CFAB would need time to prepare the case summary to send to their partner agency in Egypt. The timeframe that the partner agency in Egypt gave was subject to unexpected delays such as civil unrest and to lengthy bureaucratic procedure so the preparation of the assessment was likely to take much longer than that short timeframe which had been given. In addition, CFAB had not requested an FGM risk assessment from their partner agency in Egypt before and were unable to guarantee the depth of analysis in the report or its efficacy. This observation proved prescient. On 1<sup>st</sup> March 2017 enquiries were made by the LA through the Egyptian Consulate to find out about the requirements needed to commission an ISW to carry out a risk assessment of the paternal family.
23. The Egyptian Embassy told the local authority on 2<sup>nd</sup> March 2017 that they would need to know exactly who will be travelling on their behalf including their full name and nationality, and as to whether there is an organisation or governmental office in Egypt who was expecting the visit from the ISW. The Egyptian Embassy requested the following information: copies of each person's passport who intended to travel, clear intended dates and length of stay along with either an invitation letter from the expecting organisation or official or an official letter from the local authority setting



Approved Judgment

out the purpose of the visit. On 3<sup>rd</sup> March 2017, a home visit was carried out by Ms Masanga during which M's wishes and feelings were recorded; M still wished to travel to Egypt with X. F was said to have made another appeal for his visa application but, it was recorded, he had not heard anything about it.

24. The case came before me on 10<sup>th</sup> March 2017. Directions were given timetabling the proceedings to the final hearing and permitting applications to be made for any other expert witness to be made by the 24<sup>th</sup> March and considered on paper in the first instance. Permission was given to instruct an expert in Egyptian Law to provide advice on the enforceability of a British FGMPO, the punishment equivalent in Egypt should it be breached, and the existence of any equivalent FGM protection orders in Egyptian Law.
25. On 31<sup>st</sup> March 2017 M and X were visited at home by the social worker, who assessed M's understanding of FGM. M told her that FGM is practised in various parts of the world and it is brutal; it is practised in Egypt and it has major after-effects on the girls and women who were subjected to it. It was her understanding that it was made illegal in Egypt in 2008 and the number of girls subjected to FGM had decreased. There are four different types of mutilation classified by the World Health Organization, this classification was recommended for use in family cases by Sir James Munby P in *Re B and G (Children) (No. 2); sub nom Leeds City Council v M, F, B, G (B and G by their Children's Guardian)* [2015] 1 FLR. Types I and II (the most invasive, involving serious and extensive excision of parts of the genitalia) has been widely practised in Egypt. Types III (which also involves excision) and IV have been observed in Egypt as well; they all have psychological as well as physical impact on the victim.
26. M said that she knew her sisters-in-law had been examined and they had not undergone FGM. M said her sister-in-law's daughter was not examined because they live with her father and F's family may not have shared the information [about this case] with the child's father. M had no contact at all with her sisters in law because of the language barrier and because they do not use the internet. The social worker recorded that M had said that only the PGM had been mutilated. M said that she would still like to travel and visit her husband; she said that their plan had always been to return to England. The longer the court case is delayed the harder for her to return to England, and she said, because of Brexit, as they had intended to move to an EU member state (Malta was named as a possible destination), from where she would be able to bring her husband to the UK and for him to apply for residency here.
27. On the 4<sup>th</sup> April 2017 an order was made, by consent and following a paper application for the instruction of an expert in Egyptian Law who was also a consultant on human rights and the civil and criminal law on FGM in Egypt. Ms Abulkomsan prepared two reports for the court but did not give evidence at the hearing. Her report set out that the general prevalence of FGM carried out on infants and girls in Egypt was 92%. Most mutilation (over 75%) takes place when the girls are between 9 and 12 years old, presumably around puberty. About 14% of the mutilation takes place under the age of 7 years. English [sic] court orders are not enforceable in Egypt as English law is not applicable in Egypt; it follows that there is no procedure under which English court orders can be recognised in Egypt; there is no equivalent of a FGMPO in Egyptian law; I shall return to this later in the judgment.

Approved Judgment

28. On 28<sup>th</sup> April 2017, a Child in Need (CIN) meeting was held, there were no concerns raised by professionals in respect of X's care. At the meeting a discussion took place regarding these proceedings and FGM during which M was again asked about her understanding of the practice of FGM in Egypt. M was reported to have said that she was worried at the outset because of the prevalence of FGM in Egypt, and that she raised the issue of FGM with the health visitor, (KA) because she wanted to know how to approach her husband and the whole of the paternal family about it. It is reported that M said that when she communicated with F on 9<sup>th</sup> October 2016 initially he did not know what she was talking about, but that after a few days F had spoken to his family and they had confirmed that they would not do it to X then. Ms Masanga asked M about the report in Children Services' records (referred to above) that F thought M had undergone FGM herself and when a conversation between them took place in 2013. M said that F asked her if she had undergone FGM as he assumed that she had undergone FGM; she had said that she did not know about it and F had explained that it was "*a part of the culture*".
29. M was asked to explain the contradiction in what was saying because M has just said that in October 2016 F told her he did not know what she was talking about, but she had also said that in 2013 he asked her if she had undergone FGM herself. M explained by the contradiction by saying that she thought it was the terminology of FGM that she was using had confused F, but that when she had explained to F what it was she was referring to he had then inquired of his family and they confirmed that they would not do it to X, anyway. At the time M said (in the CIN meeting) it was whilst she was waiting for F to find out about his family's position regarding X undergoing FGM; she had also told the health visitor that she was worried about suffering from sleep deprivation. M was asked about text messages on her phone exchanged with F (it is one of their preferred methods of communication) but when M checked her phone during the meeting she said that the messages were not uploading.
30. They discussed the expert report from the Egyptian Lawyer; M said that she had understood, from the report, that British Law did not apply in Egypt and thought it would be helpful for her husband to give undertakings; she agreed a prison sentence would be appropriate should he subject X to mutilation. M said she knew that a husband had power to ban the travel of his children from Egypt, but that her understanding that the travel ban differed from that of the expert as she had thought that F could only apply a travel ban if they [she and he] were from different religions. M was asked how she thought the situation can be managed now she was aware that F could apply a ban on X leaving Egypt. Her response was for F to give a further undertaking not to apply a ban on travel for X; she said she was certain that the undertaking could be enforced.
31. It was recorded that M had understood the expert's report to mean that the 92% prevalence of FGM in Egypt applied to women and not to children, and that therefore children are not at risk. M quoted the expert's answer to the question about prevalence where Ms Abulkomsan had said that the prevalence amongst younger children (i.e. below the age of 9) is 14%; the implication being that X would not be at significant risk. According to social services' records there was a telephone conversation with F which took place on 2<sup>nd</sup> May 2017 during which he had expressed discontent with the matter being in court and said that conversations he had had with the previous social worker [Ms Oni] were misrepresented. F said that it was his wish to see his daughter

as he has not seen her for eight months; he said that he misses his wife and he was struggling to understand why there has been a delay in coming to a decision.

32. On the 8<sup>th</sup> May there was a pre-trial review at which final directions were made for the hearing to commence on 24<sup>th</sup> May 2017. The FGMPO remained in force. M and X were visited at home by social services on 9<sup>th</sup> May 2017, the day after the pre-trial review. By then M and her child had moved into their own, albeit shared, accommodation provided by a Housing Association and M told the social worker she was on the waiting list to be accommodated in her own flat. M was informed that the local authority would be telephoning F to tell him that the expert report could not be forwarded to him because he does not have a secure email address.
33. The hearing started on 24<sup>th</sup> May 2017, as listed. The hearing was extended to five days as the extent of the oral evidence, and the proceedings generally, would take longer than originally anticipated because of the number of witnesses, the need to use the services of an interpreter for F and more than one interpreter when his parents were to give their evidence by video link. The use of the video link, as invariably seems to be the case, proved to be unreliable and prone to cut out adding to the length of the proceedings. The court heard the oral evidence of KA (the Health Visitor), Ms Mary Oni (the first social worker with training in FGM), the Paternal grandparents, Ms Tsitsi Masanga (the allocated social worker) and M. The next hearing had to be listed on 30<sup>th</sup> August 2017 and on 8<sup>th</sup> September 2017 because of the prior commitments of the court. An order was made which included a recital intended to support F's application for an appropriate visitor's visa to enable him to attend court to give his evidence on 30<sup>th</sup> August; and for the FGMPO to remain in force until 23:59 on 26<sup>th</sup> November 2017.
34. The hearing took place, I shall return to the evidence given below. After the hearing was adjourned part-heard, M and X continued to be monitored by the local authority. A CIN meeting was held on 5<sup>th</sup> June 2017 and, once again, no concerns were raised by any professional in respect of X or the care she was receiving from her mother. M said to the social worker that, following the hearing in which she had just given evidence, she felt that she would not be travelling to Egypt anytime soon, particularly after of the evidence given by the paternal grandparents. She said that she wanted to pursue her education and to look for a part-time job. To that end the court ordered a copy of her passport to be made available to her for identification when she made applications for work or to enrol on any courses.
35. M and X were visited at home on 9<sup>th</sup> June 2017 and, as before, there were no concerns recorded about X's care at home. M and the social worker discussed F's application for a visa as it had become apparent that they had applied for the wrong visa. M told the local authority that she had made an appointment with immigration lawyers for the next week, and would keep the LA informed of the outcome.
36. On 15<sup>th</sup> June, a telephone conversation took place between F and the social worker during which she asked him about his understanding of the impact of FGM on X. It was recorded that he responded by saying, *"I am sure that I am not going to do this and I never thought about doing this matter at all, I never thought about conducting this matter at all I know that FGM is not good for girls I know that statistics indicate that there are girls who have been subjected to FGM but myself and my family we live*

Approved Judgment

*far from where FGM is practised and it is not good for girls.*” This recorded assertion, while in keeping with the evidence he later gave to the court, raises questions about why, for example, he says the area in which his family live is far from where FGM is practiced and why FGM, which is present in more than 9 out of every 10 females in the population, should be significantly lower in that area. F confirmed that he and his parents were willing to undertake work around the impact on FGM (but they had not done anything to identify where and with whom this work was to be undertaken). F explained that M had been unable to attend the appointment with the immigration lawyer because of the fire at Grenfell Tower.

37. On 14<sup>th</sup> July 2017, a CIN meeting was held, but, unusually, M did not attend the meeting and there was no message received from her. Meanwhile the child’s guardian had managed to contact UNICEF Egypt and make a referral through them for some work to take place with F and his family.
38. On 27<sup>th</sup> July 2017, a meeting was held with the paternal family and Dr Al Tahir from the CEWLA Foundation in the Giza governate in Egypt arranged wholly through the efforts of the child’s guardian. A very brief report of the meeting was produced. F spoke to the local authority on 1<sup>st</sup> August 2017 and confirmed that his family attended a meeting with a number of professionals, but he said he was not sure who the professionals were. F had not heard about his immigration application and was not sure whether his application for a visa was sent by his solicitor to enable him to come and give evidence during the hearing listed on 30 August 2017.
39. On 16<sup>th</sup> August, a letter from the Home Office was received by the local authority which confirmed that Mr Mohamed’s EEA Family Permit visa application was refused on 19<sup>th</sup> December 2016 and that on 2<sup>nd</sup> January 2017, an appeal had been lodged against the refusal about which no decision had been made. M and X were visited at home on 18<sup>th</sup> August 2017 by the social worker and there continued to be no concerns raised about X’s care. M said that that she had received the report from CEWLA following their meeting with the paternal family; she is reported to have said that the report was positive but that it was too short.
40. The hearing resumed on 30<sup>th</sup> August 2017 when F and the guardian, Mrs Lillian Odze, gave evidence before me. The day after the hearing the Housing Association confirmed that M (with X) had been allocated their own two bedroom flat. Final written submissions were received from the parties on 8<sup>th</sup> September 2017. M’s position, as of September 2017, was that she intended to remain living in the UK and was in the process of looking for work to support herself and her daughter financially. She still wants to visit Egypt and her husband, but for two weeks and would be willing to give any undertaking to the court that is considered necessary. F wants the ban in the FGMPO lifted so that X can travel to Egypt; he did not specify the length of time of any visit. It was still not clear whether he intended to travel to the UK to visit X (and would renew his visa application this time for the appropriate visa) or whether he intends to live with M in England in due course, as had been the original intention as stated by M.
41. In their final submissions the local authority sought a continuation of the FGMPO during X’s minority and this was supported by the guardian. The guardian was rightly concerned that X should be able to spend time with her father; the guardian took the

Approved Judgment

view that F should seek advice and take steps to enable him to travel to the UK to spend time with X here. The guardian also suggested that F and his family engage in further work with the CEWLA Foundation or a similar organisation to broaden their understanding of the effects of FGM and its consequences; and, that the local authority support M in either accessing an appropriate professional to work with her in developing strategies, or to do the work with her themselves, to protect X from any risk of FGM.

42. A Child in Need meeting was held on the 4<sup>th</sup> September 2017 during which M said that the court proceedings had put a strain on her relationship with F. On 5<sup>th</sup> September 2017, a response was finally received by the local authority from the National Council for Women (NCW) in Egypt, following a referral and enquiry made by them in July 2017, to find out if the NCW would be able to work with the paternal family in Egypt. The NCW asked for the paternal family's contact details, which were provided. On 9<sup>th</sup> October 2017, the local authority received an email from a worker at NCW telling them that NCW had forwarded the paternal family's details to the relevant worker who would contact the family. NCW would keep the local authority updated.

**The evidence**

43. In addition to the evidence filed by the parties and contained in the court bundle, including expert evidence, all of which I have read, I heard evidence from M, from Ms Oni and Ms Masanga, from the paternal grandparents, from F and from the guardian. I have referred to the statement of DC Conder above; his evidence was not challenged and, as such I rely on it.
44. In considering the evidence of the parties in this case I have kept in mind as I must, the provisions of a "Lucas" direction, (*R v Lucas* [1981] QB 720) and remind myself that people tell lies for many reasons, including to advance their case, to avoid embarrassment or cover up for their ignorance, and it is not always or necessarily because they are not telling the truth. Nonetheless where there are instances where a witness has lied directly about the issues in this case pertaining to FGM I can and I do reach conclusions about those lies.
45. Paternal grandparents' evidence. F and his parents gave evidence from Egypt by poor and barely adequate video links. Despite the shortcomings inherent in hearing evidence in this way, including the limitations on observing a witness through such a poor link, I was able to gain a sufficiently clear impression of their evidence and specifically their approach to FGM to be able to assess it and was left unassured by what they had to say. They were largely dismissive of FGM being a problem in Egyptian society as a whole and in their family in particular. The PGF was particularly off-hand in his evidence, brushing aside any questions about the effects of FGM and denied that FGM continued to be a problem in Egypt in the face of the conclusion of the research collated by UNICEF and other NGOs, in conjunction with Egyptian governmental departments, which is that the practice is still prevalent in Egypt and that over 90% of the female population has undergone FGM. Moreover it was the evidence of the expert witness Nehad Abulkomsan, which remained unchallenged, that although there has been some decline in FGM over the past few years there still remains a very high prevalence of its practice.

Approved Judgment

46. To this is I must add the evidence from the social worker about what the PGF told her when first asked about FGM; it is her evidence, which I accept, that he had told the local authority that no female members of the family had been subjected to FGM. As his wife (the PGM) had herself been subject to FGM this must have been a deliberate lie for he did not subsequently claim that he did not know that his wife had been mutilated. Both F and his father said that men did not discuss FGM and that it had not been discussed in their family and that FGM was a matter for women. They both insisted in their oral evidence that FGM was not practised in their family. As the unchallenged expert evidence before this court is that FGM is still practised widely, it would follow that the paternal family have taken an unusual and unorthodox stance within their community; yet there is no evidence before the court that this is the case; this is a contradiction inherent at the heart of their evidence, which fatally undermines what they say. It is clear that there has been no discussion of this decision within the family, so much so that it is not known (and there is no evidence before this court) whether another granddaughter, their own daughter's child (and X's cousin) has undergone or is to undergo mutilation.
47. In his oral evidence, the PGF said that he had taken his daughters to be examined by a doctor in order to produce evidence that they had not been subjected to FGM. The evidence, such as it is, is wholly unsatisfactory and I cannot and do not accept it as proof that FGM has not taken place. The document submitted is an unnotarized letter consisting of one sentence "*We confirm that the following medical tests on the following people [there follows two names] under the supervision of Dr A, attending doctor in the family clinic of S medical centre, we confirm that there was no female genital mutilation performed on the above-named person [sic] as proven by the medical test.*" The letter is apparently undated. There is no detail, much less a curriculum vitae, of the person (or persons) who carried out the "test", their qualifications or expertise, the nature of the examination, the results of the individual examinations, the methodology or the findings on examination. In the light of what F told M of his belief that his sisters and all females in the family had been subjected to FGM and its prevalence in Egyptian society it remains more likely than not, on the evidence before the court, and the absence of any reliable independent evidence to the contrary, that F's sisters have undergone FGM.
48. It was not possible properly to assess the views of F and his father on any particular aspect of FGM as their oral evidence consisted of a blanket denial of any FGM within their family and an insistence that FGM was no longer a problem in Egypt. In the face of that monolithic response it was not possible, for example, to assess their views on FGM, or to elicit from either or both of them whether the risk of mutilation to X was low at present because she was still very young and that it is likely it would become more unacceptable to their wider family or within their community and social milieu as she neared puberty for her to remain untouched. The question of pressure to conform and to carry out FGM to avoid social stigmatization was not touched upon, nor did F or the PGF explain the reasons why their family, alone among the vast majority of the population have rejected this practice.
49. F's evidence. F gave evidence after he and his family had attended for an interview with CEWLA in August shortly before the hearing recommenced. This visit was arranged by the child's guardian shortly before the trial resumed. While it is true that the paternal family took the trouble to travelled to attend the meeting it is a fact that it

was not through any effort of theirs that the meeting was arranged. Those professionals who took part produced a very short (less than two sides of paper) report which did not amount to evidence that the family's claim of unorthodox stance against FGM was credible, as what they said was not challenged or investigated in any way. The document was of very limited value to the court and I cannot and do not place any reliance on it other than as evidence of the paternal family's apparent willingness to engage with professionals in Egypt; provided it is arranged for them.

50. Even though he had attended this meeting it was obvious from F's evidence that he had learned little from it and he that remained largely accepting of the practice of FGM, which he demonstrated by telling the court that he understood there to be a need for it in the first place. His reason for why FGM had taken place and been part of the cultural norm within the patriarchal society which he came from, was as he told the court, that FGM was considered necessary to restrain the sexual appetites of women within in Egyptian society and to curtail any likelihood of promiscuity on their part. He made mention of prostitution. This is consistent with what he had previously told M, when he had said that FGM should be legalised and performed in hospitals. I accept M's evidence and find that he is what he had said to her. Not only is that a conspicuous contradiction of any claim that he and his family are against the practice of FGM, it is in keeping with what is evidently his intrinsic belief that FGM is necessary to exert some social control over women's sexuality.
51. I find that F, as M said, told her that it has been part of Egyptian culture and tradition for FGM to be carried out and had been carried out within his family. He was frankly disinterested in whether his sisters had been mutilated, assuming that not only had they been subjected to FGM but that M had as well. There was nothing in his evidence to suggest that he, or his father found the practice offensive or repugnant which, as I have said, is evinced in the explanation for FGM he gave the court namely that it curtailed the sexual desire of women and reduced the likelihood of their promiscuity. Moreover, despite being pressed, repeatedly, for to give some example or some explanation of his understanding of the psychological and other effects of FGM he was singularly unable to give any examples of what the deleterious effects of FGM on a woman would be and was equally unable to demonstrate any insight or empathy for the victims of FGM.
52. I find, that as M had told the social worker and police officer during that meeting with them early in these proceedings, F believed, and continues to believe, that FGM should be legalised and carried out in hospitals. F has not been consistent in his evidence and has lied to the local authority. He admitted in his oral evidence that he had been under the impression that M had had FGM herself but categorically denied it in his statement and in speaking to Ms Oni. I am left with no alternative but to find that F's evidence was changed to suit his story and to what he felt best served his case. I do not share M's belief that F would not allow any harm to come to X as it is more likely that he would do as he has done throughout, which is to do what best suits his own wishes. Thus, given his belief that there are good reasons for FGM, should he feel under pressure when X gets older for her to follow in the prevailing cultural practice as his daughter and be subjected to FGM there is nothing in his evidence to reassure the court that he would put her interests before what he perceives to be his own. I was left in little doubt that F really sees little wrong with FGM at all.

Approved Judgment

53. In November 2016 when F told M that X would not undergo FGM it was because she might be imprisoned, rather than expressing any concern for the consequences of FGM for X, herself. Later, although he had by then been sent the FGM “passport” from M in Arabic and had attended a meeting with the CEWLA foundation along with members of his family, and had participated in these proceedings for months (including the first part of the trial) F remained unable to explain to the court any understanding of the consequences of FGM for women who have undergone it, beyond the immediate physical dangers if it went wrong. It is inconceivable, and I do not accept, that this man comes from a family that has taken a decision to eradicate the practice of FGM. No explanation has been given as to how this decision was reached without any discussion; indeed, the evidence is that F thought that it was continuing as he believed his sisters had been subjected to mutilation themselves.
54. Missing from F’s evidence is any indication of his intentions regarding M and X should they continue to be prevented from travelling to Egypt. He has, apparently, applied for the “wrong” visa and prevented from travelling to the UK. He gave no evidence nor was any explanation provided as to why this was the case and what he intended to do about it. There is nothing to stop him applying for a visitor’s visa at the very least, so that he can see his wife and daughter in the child’s mother’s country, notwithstanding M’s explanation to the police was that it was not financially viable. The guardian’s observation, “*I remain unclear as to why he has not sought to reapply [for a visa] or what would prevent him issuing a fresh application...*” is a pertinent one. It would seem that F’s case is based on his belief that the onus is solely on M to travel to Egypt to allow F to develop a relationship with X but the fact is that he, too, bears a responsibility for ensuring that he sees his child; and his wife.
55. Local authority evidence. The two social workers and the Health Visitors gave oral evidence on the basis of their written evidence. They had all made notes of their meetings with M, and retained some independent memory of their conversations with her. The concerns that they expressed were legitimate and evidence based; for example, Ms Oni said that she had misgivings about the “medical evidence” (my parenthesis) produced by F in the shape of the letter from a doctor which, as she said, was not independently verified, along with the fact that much of the FGM in Egypt is carried out by medical professionals; a reference by the social worker to the so-called medicalization of FGM. There is no easily discernible reason or reasons for any of these professional witnesses to have lied or invent evidence in respect of what M or any other party said to them. No good reason has been put forward as to why they would do so. The evidence of Ms Masanga regarding her meeting with M was supported by the police officer. In each instance where there is a discrepancy I prefer the evidence of Ms Oni and Ms Masanga and accept and rely on their evidence.
56. M’s evidence. The fact remains, as it has from the outset that M, herself, is concerned about X’s safety should she travel to Egypt. At the end of her oral evidence she told me that she had not been reassured by the evidence of the paternal grandparents; particularly that of the PGF. M pointed to two areas of his evidence that were most concerning to her, when cross-examined by counsel for F. They were the PGF’s denial of the prevalence of FGM in Egypt and him taking his daughters to the doctor “*behind his wife’s back.*” There were significant incidences where M’s evidence differed from F’s, some of which I have set out above, and included her evidence about the delay in his response to her initial query about X being subjected to FGM.



Approved Judgment

M was concerned, she said, when he did not respond straight away, it was the next day before he said, “we will not do it then.” In his statement, the implication is that he answered saying no-one is talking about such a matter. There is a qualitative and crucial difference in the word used by F in each account; M’s recollection of his words implies that FGM was being or, at least, would have been considered; F’s that there was no consideration of FGM being practiced at all. I prefer M’s evidence, as it is consistent with what she had said in her written and oral evidence and with F’s worryingly insouciant attitude towards FGM generally.

57. I found M’s evidence to be, by and large, honest and open. I have absolutely no doubt whatsoever that M loves X very much and does not want to take any risk with her safety; that is why it was she who raised the question about FGM and travelling to Egypt at the outset, precipitating these proceedings. That being said I find that she did tell the Health Visitor that F had told her the paternal family would expect X to be subjected to FGM. It is more likely than not that he did say that or something very like it; why else say later that “we will not do it then”? M has shown that she will put X first but she would be totally isolated in Egypt with nothing to protect her or X either in the form of court orders or intervention by the Egyptian authorities as she said to me herself she does not “*understand the risk [involved] in going there...I am unsure how to assess how much of a risk there is...*”
58. The expert evidence. The expert report makes clear that although there has been some decline in the FGM statistics in Egypt since the new laws were brought into force in 2008 and 2016, there still remains an extremely high prevalence; in 2014 92% of all females had been subject to the practice. It is one of the highest rates of the practice of FGM of any country in the world. The highest risk to girls in Egypt is between the age of 9 and 12 years. The expert told the court that F could prevent X from leaving Egypt, and, although X’s parents could enter into a formal notarized agreement to allow M to leave, there is no mechanism for enforcing such an agreement. F can unilaterally renege on the agreement without sanction. Any undertaking given by F would be similarly unenforceable. There is no recognition of the orders of this court nor is there any mechanism for the enforcement of any judgment or order of this court. X and M would in fact be subject to the will of F as the child’s father, as any undertaking given by him is based on his good-will alone and is unenforceable, it offers little or nothing by way of reassurance, when viewed objectively.
59. Guardian’s evidence. The guardian gave oral evidence in support of her written analysis in which she said “*the mother has no family in Egypt and is entirely reliant and dependant on the father whom she appears to trust unconditionally. There is the language barrier. If there was any discussion between family members she would not be able to understand what this is about and thus would fail to be alert to any potential risks to [X]. ...the mother does not know if she is legally married to the father...this together with the differing accounts between her and the father, lead me to fear that the mother is at risk of being manipulated.*” I agree.
60. The guardian assessed the potential risks to X of FGM in Egypt; she considered, as do I, that M is quite genuine in her determination to protect X from FGM but was concerned, as am I, about her naivety in accepting F’s assertions without question; her lack of understanding about her own legal situation and status in Egypt; her vulnerability and isolation and the absence of any agency to offer assistance or

protection. The risk to X of FGM must remain high as the prevalence of its practice is almost universal and the paternal family have demonstrated a worrying lack of candour along with their unconvincing claims that their family, almost ideographically, do not practice FGM.

## **The Law**

61. The power of the court to make Female Genital Mutilation Protection Orders came into force in July 2015 when the Female Genital Mutilation Act (FGMA) 2003 introduced into the law of England and Wales various offences concerning female genital mutilation by virtue of s73 of the Serious Crime Act 2015. The local authority which brought the case, invites the court to consider making a FGMPO in respect of X which is to remain in force until she reaches the age of sixteen. The use of the orders made under Schedule 2 of the FGMA 2003 are specifically aimed at protecting girls from genital mutilation has been a matter of consideration for the court since the outset of these proceedings and continues to be the principal issue about which the court is being asked to adjudicate.
62. The evidential burden is on the party bringing the case and standard of proof which I must apply is the ordinary civil standard, the balance of probabilities. That standard applies in family cases as it does in all civil cases. In these proceedings the burden of proof falls on the applicant local authority which brings this case seeking a FGMPO which includes a prohibition on M travelling to Egypt with X to visit F and his family. The standard of proof is the civil standard; the balance of probabilities as set out in the seminal case of *Re B (Care Proceedings: Standard of Proof)* [2008] UKHL 35, [2008] 2 FLR 14, by the House of Lords and confirmed by the Supreme Court in *Re S-B (Children)* [2009] UKSC 17. It is not necessary for me to analyse the law in respect of the standard of proof in depth as it is not in issue.
63. Ultimately the court is concerned with the welfare of X and her safety. With reference to Schedule 2 to the Female Genital Mutilation Act 2003 the court has the power to make a FGMPO where appropriate, as follows for the purposes of; *“(a) protecting a girl against the commission of a genital mutilation offence and in deciding whether to exercise its powers under that paragraph; and, if so... the court must have regard to all the circumstances, including the need to secure the health, safety and well-being of the girl to be protected. An FGMPO may contain (a) such prohibitions, restriction or requirements, and (b) such other terms, as the court considers appropriate for the purposes of the order. The schedule provides that the terms of an FGM protection order may, in particular, relate to conduct outside England and Wales as well as (or instead of) conduct within England and Wales ...”*
64. FGM was considered by Sir James Munby, President of the Family Division in *B & G (Children) (No 2)* [2015] *ibid*. In his judgment at paragraph [55] he said *“... FGM is a criminal offence under the Female Genital Mutilation Act 2003. It is an abuse of human rights. It has no basis in any religion. I repeat what I first said as long ago as 2004 in Singh v Entry Clearance Officer, New Delhi [2004] EWCA Civ 1075, [2005] 1 FLR 308, para 68: it is a “barbarous” practice which is “beyond the pale.”*
65. The practice of FGM has been universally condemned nationally and internationally; it is a heinous and brutal invasion of the person and body of girls and women which is

entirely without redeeming feature; it cannot be excused for any reason be it psychocological, cultural, religious or social. As the President said it has been described it as “*an evil practice internationally condemned and in clear violation of Art 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 .*”<sup>1</sup> and by Lady Justice Arden in the same case as “*a repulsive practice ... deleterious to women's health.*”

66. At paragraph [57] the President went on “*In NS v MI [2006] EWHC 1646 (Fam), [2007] 1 FLR 444. a forced marriage case, I said this (paras 3-4): [3] Forced marriages ... are utterly unacceptable. I repeat what I said in Re K, A Local Authority v N [2005] EWHC 2956, (Fam) [2007] 1 FLR 399, at para [85]: ‘Forced marriage is a gross abuse of human rights. It is a form of domestic violence that dehumanises people by denying them their right to choose how to live their lives. It is an appalling practice. [I then quoted what I had said in Singh before continuing] No social or cultural imperative can extenuate and no pretended recourse to religious belief can possibly justify forced marriage.’ [4] Forced marriage is intolerable. It is an abomination. And, as I also said in Re K, at paras [87]- [88], the court must bend all its powers to preventing it happening. The court must not hesitate to use every weapon in its protective arsenal if faced with what is, or appears to be, a case of forced marriage.*” In my judgment, every word that I there used in relation to forced marriage applies with equal force to FGM.”
67. The legislative framework for FGMPO was based on that which had previously introduced Forced Marriage Protection orders, hence the President’s reference to forced marriage. I accept the submissions on behalf of the child and of F that when considering the making of a FGM Protection Order, the court should assess the risks of FGM in each case on its own facts have regard to all the circumstances, including the need to secure the health, safety and well-being of the girl to be protected; consider the proportionality of making such an order in light of any risks assessed; and having regard to the Article 3 and 8 ECHR rights of the family members concerned.
68. Mindful of the United Nations Convention on the Rights of the Child, as well as the provisions of the CA 1989 and Part 16, the court had ordered the child to be joined as a party to ensure that her voice was heard. I keep in mind, too, each child’s right and need for a relationship with both of their parents as in this case. In *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4; [2011] 2 AC 166 Lady Hale in considering article 3(1) said that:

“[23] ..... *In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. This is a binding obligation in international law, and the spirit, if not the precise language, has also been translated into our national law. Section 11 of the Children Act 2004 places a duty upon a wide range of public bodies to carry out their functions having regard to the need to safeguard and promote the welfare of children.*”

---

<sup>1</sup> In *Fornah v Secretary of State for the Home Department* [2005] EWCA Civ 680, [2005] 2 FLR 1085, Auld LJ (para 1)

Approved Judgment

69. The emphasis in a case such as this involving the risk of FGM must be on the need to protect the child from any such harm. It is necessary repeat that to the practice of FGM constitutes a fundamental breach of the human rights of any girl or woman who is subjected to this facinorous custom and that its effects are protracted and irreversible. Should X be subjected to such mutilation she would be physically and psychologically affected for the rest of her life. The harm done is physical and inherently dangerous; the mutilation can and does affect girls and women through puberty, maturity, pregnancy and child-birth and beyond. The psychological effects are profound.
70. Female Genital Mutilation is a criminal offence in the United Kingdom. Professionals who work in health, education and within child protection agencies, including local authorities, are obliged to report any possible FGM to the police; this is mandatory (see section 5B of the FGMA 2003). FGMPO (Female Genital Mutilation Protection Orders) came into force by virtue of s73 of the Serious Crime Act 2015 which introduced a new Schedule 2 to the FGMA 2003. The court was given power to make a FGMPO for the purpose of protecting a girl against the commission of a FGM offence (as defined by the FGMA 2003 s 1(1)) or protecting a girl against whom such an offence has been committed.
71. The government has taken a proactive stance against FGM as can be seen from the *Statement opposing female genital mutilation*, published by the Home Office, Department for Education, Department for International Development, Department of Health, Ministry of Justice, December 2016. It is a matter of public policy that girls are to be protected against FGM and those that carry out such mutilation or fail to protect a girl will be guilty of an offence under s 72 of the Serious Crime Act 2015. In addition, under s5 B inserted by s74 of the Serious Crime Act 2015 it has been mandatory since July 2015 for persons working in regulated professions to notify the police if it appears FGM has been carried out on a girl under the age of 18. The Act defines persons in a regulated profession in s5B (2) and it includes health care professionals; M became aware of this because of her own experience with the Health Visitor. The purpose of Schedule 2 of the Act is to provide for protection and to stop FGM taking place, so that those in regulated professions are expected to take action and inform the appropriate authorities, including the police, to initiate protective procedures.<sup>2</sup> The Home Office has issued multi agency guidance.
72. As set out above a FGMPO may be made by the court in the exercise of its powers under the Act; in deciding whether to exercise the power the court is required under Schedule 2 paragraph 1 (2) to have regard to all the circumstances, including the need to secure the health, safety and wellbeing of the girl to be protected. The scope of a FGMPO is wide, as is the pool of possible respondents to any order as it includes any person who commits or may commit any genital mutilation offence, anyone who is or may become “involved in other respects” as well as (or instead of) respondents provided in paragraph 1(4) (b) of Schedule 2, and other persons who are or may become involved in other respects as well as respondents of any kind. “Other respects” are defined at paragraph 5(a) of schedule 2 includes “aiding, abetting, counselling, encouraging or assisting another person to commit or attempt to commit an offence.”

---

<sup>2</sup> <https://www.gov.uk/government/publications/multi-agency-statutory-guidance-on-female-genital-mutilation>

Approved Judgment

73. It is important to note that s3A of the FGMA 2003 (as amended) creates the offence of failing to protect a girl from risk of FGM. The offence occurs if a genital mutilation offence has taken place and the offender is a person responsible for the girl. F is such a person as defined by s3A (3) (a) and (b) as he has parental responsibility. S3A (5) (a) provides a defence where it can be shown that a defendant could not reasonably have been expected to be aware that there was any such risk was present; for the purposes of this case it would be difficult for F to suggest that defence could extend to him as the evidence of the expert witness was unequivocal about the almost universal prevalence of FGM in Egypt. There is no independent evidence to support F's assertion that exceptionally within Egyptian society his family took a stance against FGM. such was available in the case of *Re E (Female Genital Mutilation and Permission to Remove)* [2016] EWHC 1052).
74. The extensive powers available on the imposition of a FGMPO include (under Schedule 2 paragraph 1 (3) (a) and (b) as set out above) such prohibitions, restrictions and requirements and such other terms as the court considers appropriate for the purpose of the order. In this case it has included a requirement that M surrender her passport; as was considered in *Re E (Children) (FGM Protection Orders)* [2015] 2 FLR 997 where there was a prohibition on a person removing a child from the jurisdiction and the requirement that person surrender their passport. An FGMPO may be for a specified period or until varied or discharged (Schedule 2 paragraphs 1(6) and 6).
75. The case also concerns the child's rights and those of her parents, in particular their right to a family life. Art 8 is a qualified right which includes at 8 (2) the exception of necessity for the protection of health and morals and for the protection of the rights and freedoms of others. Art 3 is an unqualified right that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. If a similar "procedure" were to be carried out on the genitalia of an adult male or female without their consent it would fall within the prohibitions of Art 3; it is no different for a child. Thus, any interference and has to be balanced against the risk to X of FGM should she travel to Egypt.

**Discussion and conclusions**

76. The case for F is that his family would not subject X to FGM and that, despite the prevalence in Egypt running at over 90%, his family have decided not to inflict FGM on the female members of his generation (the PGM having been subjected to it herself). To support his case, he said that his sisters have visited a doctor and there is medical proof that they have not been the victims of FGM. As observed above, this is simply not the case. The "evidence" consists of no more than a letter and does not set out any detail of the examination or what was seen; it is not notarised and cannot and does not form reliable independent evidence that no FGM has taken place. Moreover, the daughter of one of F's sisters, X's cousin and contemporary, was not examined so there is no evidence about whether or not she has been subjected to FGM before the court. There is no explanation as to why there is no evidence about this child before me; it would have provided some assurance that children of X's generation were not being mutilated. The explanation given by M is that this child is seen as a child of her father's family, that he knows nothing about this case and would not have permitted her examination is a likely explanation in what is indubitably a patriarchal society

Approved Judgment

and, while I accept what M says, it provides little by way of support to either F's case or her own.

77. It is not possible to accept that FGM is disapproved and not practised within F's family when, on their evidence, it is not something that was very seldom discussed or even mentioned at all. The evidence before the court is that M had told the social worker that it would be inappropriate for a male family member to discuss FGM and that it was not a matter that men dealt with, but it was the PGF who then took his daughters to be examined without the knowledge, and behind the back of, their own mother. In addition, there was the deliberate decision to keep the medical examination secret by the PGF and F since, as he said, that it might cause an issue with his brother-in-law. This raises a further doubt over how much the court can rely on their assertion that FGM does not take place within their family as a whole. Furthermore, F fails to demonstrate any support for the paternal family's claim that they have rejected FGM and do not practice it or that they would or could withstand the expectation from the wider family and society to carry out FGM on female children.
78. In the context of the expert evidence it is more than a little surprising that F's family has sought to say that FGM is an outdated and outmoded practice in Egypt, particularly when there has not even been any discussion within the family. F was reported as saying both to M and to the local authority that FGM is "*part of the culture*"; which is, given the prevalence in Egyptian society of FGM, a more probable and likely reflection of his views. It is the evidence in this case that X would remain at very substantial risk of FGM should she travel to Egypt with her mother, who would be vulnerable and isolated, unable to understand what was being said or discussed around her and largely, if not wholly, unequipped to prevent FGM taking place if the family decided that it should. Moreover, there is no legal mechanism to put in place enforceable protective measures; or even to ensure the X would be free to return to the United Kingdom with her mother if F decided that she should remain in Egypt.

**Discussion and conclusions**

79. In deciding whether to make a FGMPO, under FGMA 2003 Schedule 2 Part 1 paragraph 2 (2) I have had regard to all the circumstances of the case, including the need to secure the health, safety and well-being of the girl to be protected. The purpose of making an order is to protect a girl against the commission of a female genital mutilation offence. Under s4 of the Act an offence includes an offence outside the United Kingdom; this court has assessed that in all the circumstances of this case X is at a substantial risk of such an offence being committed outside the UK, namely in Egypt. This risk will rise with age (the highest risk being to girls between the ages of 9 and 12) and any order will have to remain in place throughout her childhood and through puberty to provide her with protection.
80. It is not intended that X should not be able to see her father or members of the paternal family and the court would encourage F and his family to visit X here in England. X's parents have agreed that X would live in the UK with her mother but had intended that she visit F and his family in Egypt as this is not going to be possible F can demonstrate his commitment to his daughter by travelling to the UK to see her; to assist him in making appropriate arrangements the court orders will be permitted to be disclosed to the relevant government departments, consulates and Embassies. It is

Approved Judgment

accepted both by X's guardian on her behalf in her recommendations and by this court that this judgment will curtail X's visits to her father as the trips will have to be one way only, but the risk to X is so great and the consequences of FGM for her are so fundamental a breach of her rights that the balance must come down in favour of an order protecting her from mutilation.

81. There will be a FGMPO in force until 22<sup>nd</sup> August 2032. M's passport is to be returned to her possession but there will be an order forbidding her from travelling anywhere outside the jurisdiction, or the United Kingdom, with X until 22<sup>nd</sup> August 2032 to prevent onward travel to Egypt. This is to permit M with personal freedom of movement and to use her passport for identification purposes, such as those set out in paragraph 34 above.
82. X's passport will continue to be held by the court until its expiration at which time it is to be destroyed. M is forbidden to apply for a passport or any travel documents on behalf of or in the name of X; this extends to all other persons including F. A copy of the FGMPO is to be served on the relevant unit within the Home Office, the Her Majesty's Passport Office, the FCO and the Egyptian Embassy. These orders do not affect the right of either X and M to make an application under paragraph 6 of Schedule 2 Part 1 FGMA 2003 to vary or discharge the FGMPO.
83. Contact between X and her father can and should take place in the England and Wales.