In the Family Court

Sitting at

Case number:

Female Genital Mutilation Act 2003

The full names of the children:

A baby

RE: G – A BABY GIRL

Judgment of His Honour Judge Jordan

Representation;

The applicant local authority was represented by a solicitor

The respondent parents were represented by counsel

Application

This is an application for a female genital mutilation (FGM) protection order. The application is brought by a Local Authority and was issued on 31 October 2016. The application was made by a relevant third party, a social worker at the local authority. The application appears at B1 in the bundle. The person to be protected is G, a baby born in Summer 2016, and who lives with her parents. She is accordingly approximately nine months old.

The applicants say in paragraph 3 of the said application the reasons for applying are that all three of G's siblings were taken abroad to India for female genital mutilation to be carried out upon them at school age. The application further says that "although the parents have said, in

response to the concerns of children's services, that they will not subject G to FGM, it is clear from speaking to the older children and parents that they see "cutting" as an inevitable and necessary part of their religious and cultural practice and G is at risk of physical harm by FGM unless an order is made ".

Paragraph 5 of the application sets out the orders sought and paragraph 7 sets out other information.

Case history and case management

Upon being issued the application was listed by His Honour Judge Allweis on 17th November 2016. At that hearing on 17th November 2016 a solicitor appeared on behalf of the applicant local authority and counsel appeared for the parents. The order handed down on 17th November 2016 records that the parents opposed the making of an order in the interim but agreed that the matter should be set down for a final hearing. The father had attended court and the mother had not as she was looking after G although the mother's position was the same. The father, although opposing an order, offered to give an undertaking to the court as well as voluntarily providing his and the mother's passport.

The court declared itself satisfied that the mother had been given notice of the hearing and was not satisfied that an undertaking from the parents would suffice in the circumstances and was of the view an order should be made pending a final hearing and gave judgment to that effect.

Accordingly the court made a Female Genital Mutilation order and gave directions for the filing of evidence setting the matter down for final hearing with a time estimate of one day before Her Honour Judge Newton on 27th January 2017. For the purposes of this decision I will not repeat the terms of the order made by His Honour Judge Allweis save to record that the duration of the order was "until further order".

The hearing on the 27th January 2017 could not proceed and was listed before me for 1 day on the 19th April 2017.

On 14th March 2017 I was asked, by consent, to deal with an application. It is recorded in the order that the parties had agreed that given the lapse of time between the parties' final evidence being provided in January and the final hearing which had been listed before me in April updating evidence was required. I accordingly gave directions for statements and skeleton arguments prior to the hearing listed before me on 19 April 2017.

Accordingly the case came before me on 19th April 2017 and was adjourned part heard until 26 April 2017 as all witnesses could not be dealt with within the time estimate provided.

By the time the hearing commenced on the 19th April 2017 it was apparent that the parties had failed to comply with the directions in that statements had not been filed as previously directed. Notwithstanding the parties' failure to make proper application for relief from sanction under the Family Procedure Rule 22.10 I allowed the matter to proceed and the witnesses to be called.

On the 26th April 2017 at the resumed hearing I was invited to approve an order agreed between the parties. I declined to as the order contained a recital as follows:

'And Upon no findings being sought by the Local Authority and no findings made by the court'

I reminded the parties that I had already heard the Local Authority evidence and given that I was being invited to make an order it was within my discretion as to whether I agreed to approve it or not. The parties agreed to this and also agreed that it was my discretion whether or not to deliver a judgment.

Following discussion with the parties the Local Authority withdrew its request for approval of the order containing the recital I had objected to.

As a consequence the hearing proceeded as I considered this an appropriate case for the court to deliver a judgment, which the parties agreed I was entitled so to do. The parents' counsel invited me not to make any findings and not to deliver a judgment.

At the recommenced hearing the parents declined to give oral evidence which appears to follow a draft warning I had distributed to the parties that I had indicated they should receive. In the parents' counsel's final submission there was an explanation that given the concern about self-incrimination they had decided not to give evidence and submit to an order.

The draft form of warning was;

'You have filed a number of witness statements which you have signed as being true. You are now about to be asked questions. It is important that you understand that you are not obliged to answer any questions which might show that you are guilty of a criminal offence. However your failure or refusal to answer questions when asked could result in the court drawing an adverse inference from your refusal or failure to answer questions. It is important that you understand this warning. The case was adjourned on the 19th April and you have had the opportunity to take advice on this issue before the hearing today.'

I heard final submissions from the representatives for each party. In the circumstances therefore the form of order was not opposed and the court was being invited not to make findings by counsel for the parents. I was invited to deal with the issue of disclosure of the decision, the parents' counsel sought to argue that the judgment and papers should not be disclosed to the police or any other agency. I deferred that issue until after the decision was handed down and indicated that any issues arising would be dealt with at a separate hearing.

Upon the issue of whether the court should make findings the submissions acknowledged that this was a matter for the court's discretion as with whether to approve the order or not. I heed the words below of the President in considering whether to make findings and have decided that findings are appropriate. I also decided that a full judgment was appropriate.

Further to the preparation if the judgment and prior to me handing it down further submissions were made by the respondents on the draft. I have dealt with them below.

In addition I have delayed in handing this judgment down as I had been waiting for confirmation that His Honour Judge Allweis had approved a judgment he gave on the 17th

November 2016 when he made the initial FGM order. That has only recently been approved pursuant to a request from the respondents.

The Law and Submissions

Pursuant to my directions case summaries were submitted by the parties. The Local Authorities summary was accompanied by the Multi-Agency statutory guidance on FGM issued by HM Government in April 2016.

As described by the President of the Family Division in the case of Leeds City Council v.M.F.B.&G [2015] EWFC 3 at paragraph 57 in connection with a forced marriage case where he says every word used in relation to forced marriage applies with equal force to FGM, he quotes NS v. MI [2006] EWHC 1646 (FAM) ;
"Forced marriages … are utterly unacceptable
Forced marriage is a gross abuse of human rights…

Forced marriage is intolerable. It is an abomination…

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 used there in relation to forced marriage applies with equal force to FGM"

The application is made pursuant to the Female Genital Mutilation Act 2003 ['FGMA 2003']. The Serious Crime Act 2015 was given Royal Assent on the 3rd March 2015. S.73 of the 2015 Act inserts a new s.5A of the FGM Act 2003 making provision for a new civil law remedy, the FGM Protection Order [at Schedule 2 of the 2003 Act].

The procedural rules for an FGM Protection Order [now contained in Part 11 of the Family Procedure Rules] are based on the existing rules for Forced Marriage Protection Orders.

Applications for FGM Protection Orders can be heard in the High Court and 20 designated Family Courts of which this is one.

The applicant can be the girl or woman to be protected, a Relevant Third Party, which includes Local Authorities, and someone on their behalf with the permission of the court.

The court's powers are very wide to protect the child. Breach of a FGM Protection Order is a criminal offence whether the FGM occurred in this country or abroad.

Under Schedule 2, para 1(2) of the Act 'In deciding whether to exercise its powers under this paragraph and, if so, in what manner, 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.'

So far as relevant case law is concerned Mr Justice MacDonald rightly warned against use of statistics or cultural knowledge only, in *Re E (Female Genital Mutilation and Permission to Remove)* [2016] EWHC 1052, he believed they could be used to highlight evidence, with "appropriate caution."

In *Re B & G (Children) (No.2)* [2015] 1 FLR 905, Munby P was clear at para [78] that:

'Local authorities need to be pro-active and vigilant in taking appropriate protective measures to prevent girls being subjected to FGM. And, as I have already said, the court must not hesitate to use every weapon.'

In the parents' submissions I was told that;

'*Not only do they wish to ensure that they obey the law, they now have a clear understanding of why such practices may be harmful even if, as set out in their statements, the procedures to which their elder daughters were subject were neither as invasive nor as harmful as Type I-III forms of FGM. The process has been salutary and it is submitted that, given the openness and integrity of the parents and the very good health and well-being of the elder daughters, undertakings rather than orders are both appropriate and proportionate.'*

They say that:

'The statements of the respondent parents have been admirably candid. They have consistently accepted that their elder daughters have historically undergone procedures which may fall within the Type IV of World Health Organisation ("WHO") typology[1] of female genital mutilation ("FGM").

Also that the parents state that they understand FGM in all its forms is illegal in the UK but that there is, according to the educational agency referred to as "the EA Agency" no immediate risk to G to undergo FGM'.

As the parties will recall this was, according to Miss D of the EA Agency and the author of their report, because she was a baby and the risk was not until the child was about 7. She described the risk as minimal, 10%, at that age.

The parents' skeleton sets out the definition of FGM as a collective term for a range of procedures that involve partial or total removal of the external female genitalia for non-medical reasons. It is sometimes referred to as female circumcision, or female genital cutting.

It also sets out [which I have copied below] that the World Health Organisation (WHO) has classified FGM into four types. The WHO Fact Sheet N241 summarises the 4 major types of FGM as follows:-

> *Type 1: Often referred to as clitoridectomy, this is the partial or total removal of the clitoris (a small, sensitive and erectile part of the female genitals), and in very rare cases, only the prepuce (the fold of skin surrounding the clitoris).*
> *Type 2: Often referred to as excision, this is the partial or total removal of the clitoris and the labia minora (the inner folds of the vulva), with or without excision of the labia majora (the outer folds of skin of the vulva).*

Type 3: Often referred to as infibulation, this is the narrowing of the vaginal opening through the creation of a covering seal. The seal is formed by cutting and repositioning the labia minora, or labia majora, sometimes through stitching, with or without removal of the clitoris (clitoridectomy).

*Type **4:** This includes all other harmful procedures to the female genitalia for non-medical purposes, e.g. pricking, piercing, incising, scraping and cauterizing the genital area.*
The Female Genital Mutilation Act 2003 stipulates that a person is guilty of an offence if he excises, infibulates or otherwise mutilates the whole or any part of a girl's labia majora, labia minora or clitoris.–

Whilst the WHO definition was not incorporated into the definition of FGM within the Section 1(1) of the Female Genital Mutilation Act 2003, it was adopted by the President of the Family Division, Sir James Munby, in Re B & G (Children) (No.2) [2015] 1 FLR 905. The President observed that knowledge and understanding of the classification and categorisation of the various types of FGM is vital and that the WHO classification is the one widely used for forensic purposes.

The parents accept that the court has a full panoply of powers available to it in addition to or instead of exercising its discretion to make an FGM Protection Order. As would be the case in respect of any other application for civil injunctive relief, the court is empowered to accept enforceable undertakings where the adequate protection for the person concerned would be secured thereby.

The parents' submission was that knowing FGM is illegal and given the content of the EA Agency Report it is disproportionate to make the order sought given the undertakings that have been offered. They now submit to the order sought.

I have also had regard to the decision of Wall J, then President of the Family Decision in A Chief Constable v YK and other [2010] EWHC 2438 (Fam) which was a forced marriage case. Bearing in mind the words of the current President set out above that decision has application

to these cases. He said that the ability to identify victims is inherently difficult. He decided that there was nothing in the Forced Marriage Civil Protection Act 2007 to stop the court acting on hearsay evidence or information provided to the police and not disclosed to the respondent. He said there was no requirement for there to be a conventional hearing, giving the respondents the opportunity to hear and rebut evidence. He indicated that the respondent should be given an opportunity to 'make representations' concerning the order.

He refers to the decision of Munby J, as he then was, in the decision of Re B [Disclosure to other parties][2001]2 FLR 1017 which qualified the right to see documents saying that a fair trial under ECHR Article 6 does not mean there is an unqualified right to see all the documents.

He further describes the protective nature of the order sought, namely a protective order standing in its protective capacity which may require certain of its information not to be disclosed. He said that 'to force a person into marriage is manifestly not a civil right, still less an obligation.'

He describes the Act as providing a swift and simple remedy which is, in essence, protective. As in that case an ex parte [without notice] order was made and although objected to not appealed.

Clearly these words apply equally to FGM given the words of the President above. However in this case evidence was shared and heard. Given the protective nature of the order sought and the above authorities there must be considerable doubt as to the respondent's right to see evidence in an FGM case.

The evidence

Written evidence

Within the bundle there were statements and documents where oral evidence was not called. Nevertheless they formed part of the case. However the advocates agreed that this written evidence would be given such weight as I felt appropriate.

The Local Authority produced The Multi-Agency statutory guidance on FGM issued by HM Government at A1 in the bundle. Their skeleton argument is dated the 17th April 2017, and the respondent's skeleton argument appearing at A87 dated the 12th April 2017. The C section of the bundle contained both the statements as well as various Child Protection minutes.

The Multi-Agency statutory guidance on FGM issued by HM Government in April 2016 was issued under s.5C (1) of the Act. This is to ensure professionals, as defined in the guidance, have and are aware of the reporting obligations on them. FGM is defined in the guidance.

Chapter 2 of the Guidance provides an explanation of FGM with statistical information of the extent of the Mutilation.

It sets out the International Prevalence of FGM as follows:

FGM is a deeply rooted practice, widely carried out mainly among specific ethnic populations in Africa and parts of the Middle East and Asia. It serves as a complex form of social control of women's sexual and reproductive rights. The exact number of girls and women alive today who have undergone FGM is unknown, however, UNICEF estimates that over 200 million girls and women worldwide have undergone FGM.

Whilst FGM is concentrated in countries around the Atlantic coast to the Horn of Africa, and areas of the Middle East like Iraq and Yemen, it has also been documented in communities in:

· Colombia;
· Iran;
· Israel;
· Oman;
· The United Arab Emirates;
· The Occupied Palestinian Territories;
· India;
· Indonesia;

· Malaysia;
· Pakistan; and
· Saudi Arabia.
It has also been identified in parts of Europe, North America and Australia.

It also sets out the Prevalence of FGM in England and Wales which, it says, is difficult to estimate because of the hidden nature of the crime. However, a 2015 study estimated that:

· approximately 60,000 girls aged 0-14 were born in England and Wales to mothers who had undergone FGM (see Annex B for risk factors); and
· approximately 103,000 women aged 15-49 and approximately 24,000 women aged 50 and over who have migrated to England and Wales are living with the consequences of FGM. In addition, approximately 10,000 girls aged under 15 who have migrated to England and Wales are likely to have undergone FGM.

Chapter 3 sets out the law and the exemptions.

Ay para 4.6.3 it says ‘ It is important, where possible and with appropriate support provided, to involve survivors of FGM …’.

In Annex A: Background on FGM at A.3.1 the immediate and short term consequences of FGM are set out which are;

· severe pain;
· shock;
· haemorrhage;
· wound infections;
· urinary retention;
· injury to adjacent tissues;
· genital swelling; and/or
· death.

A.3.2 sets out the long term consequences which are;

· genital scarring;
· genital cysts and keloid scar formation;
· recurrent urinary tract infections and difficulties in passing urine;
· possible increased risk of blood infections such as hepatitis B and HIV;
· pain during sex, lack of pleasurable sensation and impaired sexual function;
· psychological concerns such as anxiety, flashbacks and post traumatic stress disorder;
· difficulties with menstruation (periods);
· complications in pregnancy or childbirth (including prolonged labour, bleeding or tears during childbirth, increased risk of caesarean section); and
· increased risk of stillbirth and death of child during or just after birth.

The current social worker dealt in her evidence with the local authority's documents and adopted the previous social worker's statement.

At C7 being part of the initial case conference minutes under Decision of Conference it says; G needs to be made subject to a CP plan under the category of physical and emotional abuse, given she is at future risk of significant harm due to FGM and her elder siblings… made subject to CP plans under the category of emotional abuse, given they have been subjected to FGM which is likely to have a future impact upon the emotional social and physical well-being unless they undertake a schedule of direct work to address the implications of this; parents have been resistant to this work being undertaken, have promoted and have had their elder children subject to FGM on separate occasions (at school age) despite knowing this was an unlawful practice.'

In addition in the previous social worker's statement it is clear that the initial disclosure was from the children not the mother. In October 2016, the social worker reported that the parents did not feel it was wrong and that they felt it was a religious practice that lots of Muslim girls had undergone. I did note that as G's youngest sister was mutilated only three years ago. It is evident from the statement and minutes that the parents' belief was clear and is documented as recent as autumn 2016 with a significant shift thereafter. Accordingly it is clear on that evidence that the shift in belief occurred in late 2016/early 2017.

The first respondent Mother filed one statement dated the 20th January 2017 which appears at C76 to C84 in the bundle. In her statement she accepts she did not engage with the Local Authority in the beginning due to her pregnancy. She was unhappy with the Local Authority's involvement and felt they should accept their assurance that **G** would not be subjected to FGM.

She said that she told the EA Agency that 'a tiny part of the tip of my elder 3 children's clitorises were cut, I explained it was the length of the white bit of a finger nail [of someone who has short nails] – this would be about 1 millimetre. I did not use the word pricking.'

She said in her statement that she did not agree to G's older sisters having intimate examinations describing it as an invasion of the girls' privacy and potentially causing long lasting emotional damage. She said they were both cut when they were of school age. She described the issue of FGM coming out following a pre-birth meeting in respect of **G**. She said that one of G's siblings refused to be examined and she was concerned how any examination would affect the youngest sibling.

She described in her statement the procedure as something she thought was required by her faith, feeling at first the Local Authority were making too big an issue but now understood the seriousness.

She further described one of G's sisters as not wanting to be told something is wrong with her.

She disagreed there was a sudden shift in attitude and now fully recognised that FGM is a harmful practice that is not for religious reasons which could cause psychological problems, sexual problems and medical problems. She was also aware from the EA Agency that if the cut went wrong it can cause long standing urinary problems, cysts and scarring.

She did not want the shame and stigma of an FGM order and stated thatshe had done all the work requested, save for agreeing to an intimate examination of the children.

As set out above the mother's evidence was not given orally nor was she the subject of cross examination.

The Father filed statements dated the 20th January 2017 [C85 to C89] and 10th April 2017 [C114 to C120].

In his first statement he accepted he was 'always vaguely uneasy about the process [of FGM] but regret I went along with it, which I feel responsible for'. He accepted it was now wrong. He accepted missing earlier appointments with the Local Authority and sought to blame the Social Workers' attitude. He felt an order would be unnecessary and unhelpful.

He said the Local Authority appeared to be ignoring the expert advice of the EA Agency.

In his second statement he says that whilst he is religious he is first and foremost a father and family man who will always put his wife and children first. He says that he never regarded FGM as a central tenet of his faith. His statement deals with his recognition of it being wrong to allow FGM, and issues over engagement with the Local Authority. He accepted that FGM is wrong and children need to be protected but maintained G was not at risk and he would never allow FGM on G regardless of any change in religious edicts.

As with the mother the father's evidence was not given orally nor was he the subject of cross examination.

Oral evidence

The first oral witness was the current social worker. She was sworn and identified and confirmed she had been a social worker for the child from 23 August 2016.

She confirmed the documents filed being as follows;

C10 to C13 her statement dated 24 October 2016

C50 to C65 the child and family assessment dated 6 January 2017 of which she was the author

C66 to C75 her statement dated 13 January 2017

C106 to C113 statement dated 4 April 2017.

She confirmed all her statements and report were true to the best of her knowledge and belief. She confirmed that the previous social worker's statement was true to the best of her knowledge and belief.

In her statement of 24 October 2016 she described her experience and involvement with this case. She told me that following the initial child protection conference on 23 August 2016 (and the parents attending core group meetings on 9 September and 28th of September 2016) that since 28 September 2016 the parents had not engaged and had not attended core group meetings on 20 October 2016.

She further told me of the parents' work with the EA Agency and that the parents had completed an initial assessment and attended one session on 26 September 2016. There had been no further engagement from the parents and the girls although a session was scheduled for Monday, 17 October 2016 which the parents had not attended. Accordingly her statement of 24 October 2016 indicated a lack of cooperation at that time and an inability to complete scheduled works which she concluded demonstrated disguised compliance with continuing concerns for the safety of the child from female genital mutilation.

In the child and family assessment dated 6 January 2017, which appears at C50 to C65 in the bundle, she notes that the family have no previous history in relation to concerns around the children, and the basic care to the children is otherwise of a high standard. She told me that the referral for this case was originally referred after a routine antenatal appointment where midwives asked questions about FGM that the mother initially denied. She records that the midwives reported that G's youngest sister disclosed that she and her sisters had this procedure which the mother later admitted she had also been subject to. Accordingly-G was made subject of a child protection plan under the category of physical abuse given that there was a future risk of significant harm due to FGM.

In addition G's sisters were made the subject of child protection plans under the category of emotional abuse given that they have already been subjected to FGM. The assessment was to consider whether the family are of the belief that FGM is an evil practice and whether there is a clear understanding that "cutting is wrong" rather than just recognising that it is a criminal offence. The social worker was to assess the future impact upon the children including emotional social and physical well-being and highlight the efforts made to complete educational work commissioned by children social services.

The assessment includes a summary of the work undertaken with regards to the health issues of the children who have been the subject of FGM and the resistance to medical examination. The summary also deals with the work of the EA Agency.

The assessment indicates that the risk of FGM to G has reduced and how the parents have completed the work with the EA Agency and have an understanding through their work. The parents disclosed that the father had been against the practice from the beginning and questioned the mother as to why they had to do this and was reassured by her that it was because of their religion. They were both shocked in learning the short and long-term effects of the different types of FGM, feeling strongly about it.

There were no concerns raised in the assessment other than with regard to FGM, although the parents remained resistant to medical assessment of the children.

The social worker assessed that the children who have been the subject of FGM are at risk of complications as they grow into adulthood and embark on family life themselves. It says "complications may become evident during these times as it is still unclear the type of FGM and both children have not had medicals." There is concern with regard to emotional well-being, repression and memories relating to traumatic experiences.

The analysis and professional judgment section of the assessment, which appears at page C61, refers to a single issue as apart from the FGM the children are well cared for. The report says "in respect of the FGM being carried out on the children it would appear parents are aware the procedure is illegal and that it is illegal to take children outside the UK to have FGM completed, despite this they have gone ahead regardless."

The report records the parents' shock as well as the expectation that they would do all they can to ensure the girls are healthy and well including to have health assessment, medicals and any further emotional support they may be offered by specialised professionals. The report describes no immediate risk to the subject child as well as engagement of the parents.

The manager's comments including analysis of the outcome and reasons for the decision endorses the social workers' assessment and records engagement. It records the lack of immediate risk for the subject child and agreement that the local authority should continue with its application for the order.

In her statement of 13 January 2017 the current social worker indicates that the parents have been engaging with services making themselves available and demonstrating a sudden shift in their priorities and willingness to engage. There is reference to the EA Agency work and the change in the parents' belief. They would appear to have learned that such a practice is not a religious requirement and recognise the illegality of FGM.

The issue of medical examination of the other children remains live and unresolved.

The lack of current risk to the subject child is described as due in part to her age but also the sudden shift in parental attitude indicating the parents are motivated to safeguard the child. However the social worker has reservations in that it is unknown whether pressures from the community and any future change in leader beliefs would affect the child.

The parents' resistance to medical examination for the other children remains an outstanding concern particularly in view of the benefits of such a medical examination to those children.

The significant change of attitude of the parents is recognised but the social worker remains mindful that the older children of the family have experienced FGM at school age whilst visiting extended family in the family's country of origin. The social worker indicates that the protective order sought is not intrusive, simply asking these parents not commit a criminal offence and recommends the order being made to safeguard the subject child.

In her statement at C106 dated 4 April 2017 the current social worker sets out her further concerns about lack of engagement and attending core group meetings by the parents saying

that the parents have evidently not sustained engagement with services and that disengagement heightens the risks to the children and demonstrates a lack of insight into the current concerns.

The EA Agency identify that G's youngest sister has not undertaken any work with them and further work is planned in the summer holiday. The health assessment completed by the school health assessor reported no immediate concerns in respect of the children although suggested blood tests as well as urine tests remain outstanding tasks.

The statement confirms no progress has been made with regard to the medical evidence and the concern as to the long-term consequence being serious including genital scarring, cysts, urinary tract infections, risk of blood infections, and pain during sex, psychological problems like anxiety, flashbacks and post-traumatic stress. In addition difficulties with menstruation, complications in child birth and increased risks of caesarean sections as well as increased risk of stillbirth. None of these can be addressed without a medical report.

The social worker's assessment is that the subject child will continue to be at risk as the practice of FGM is deep-rooted in the parents' culture and the mother and G's older sisters had the procedure done. There is a description of the cultural underpinnings and motives for FGM being complex but the assessment from the social worker is that an order is needed to protect the subject child and in particular protect her from going abroad without the leave of the court. The Local Authority also seeks leave to disclose the order to the police, the family general practitioner and the passport agency so the risk can be monitored providing this the vulnerable little girl with an added level of protection.

The social worker was cross-examined extensively by counsel for the parents. She confirmed that the mother had disclosed her daughters had been subjected to some form of cutting but that her daughter had to explain the term circumcision to her. She described the practice as a cultural practice which was well embedded which some people felt to be a religious obligation and arose out of deep-seated beliefs.

She described FGM as a strongly held belief and having been told it was wrong there was resistance and shock from the parents. She confirmed the antenatal clinic was followed by a meeting with the police and the social worker and the mother admitted to the procedure.

She described the child protection plan and discussions with professionals and needing to get to the root of the issue and how an admission of FGM was made to the police and the social worker.

She was asked about paragraphs 4.2 to 4.4 of the statement of the first social worker which described the older daughters undergoing the procedure at at school age in their country of origin as well as the mother when she was of school age. She said she formed the clear perception that the parents did not feel it was wrong. She was taken through the various appointments and the core group meetings and how the mother was not well enough to attend all the meetings with attendances for maternity visits. She also conceded there was some delay in home visits due to Ramadan. She gave a history of the attendance or lack of it at meetings and explained about the purpose of the EA Agency and why they were involved. She described it as a service to support the family who were commissioned by the local authority as an appropriate service and it was an educational service.

She said that when the social worker had attended at this early stage they were told what they needed to hear and thought it could or may be disguised compliance although it is possible that it might be otherwise.

She was concerned about the deep embedded beliefs. She conceded that some of the older sisters were Gillick competent and the youngest sibling had refused an examination. There was a general discussion about the medical evidence and she told me that they did not have evidence concerning health complications of the children. She felt that health complications may point to issues that all was not well and conceded that requiring the children to be the subject of a medical examination may be more disturbing than not. She conceded the parents had engaged and engaged with the EA Agency and described the work with the children.

She agreed that there could be further child protection or care proceedings if there was no cooperation

She was unable to forecast what would happen when the subject child was of school age although she knew the parents were aware of the serious consequences and there was no

evidence the mother would not comply with the law. She said the mother definitely knows the law now and knows it is illegal.

In answer to questions from me she confirmed the father never explained why he had not attended meetings even if the mother could not and he would have been welcome to attend on his own. She agreed the lack of medical evidence continued to be a concern and the local authority was continuing to encourage them to agree to the children being medically examined.

She described the increased level of support that could be given to the children if they knew the nature of the mutilation and the extent of it.

I found this witness to be clear and consistent having taken over the case from the first social worker. Her analysis was thorough and helpful.

I next heard from Miss D of the EA Agency who was sworn and identified. She gave her qualification as a mental health practitioner. She had produced a summary of FGM therapeutic report dated 22 December 2016 which appears at C40 to C49 in the bundle. She produced a further report dated 23 March 2017 at C94 to C104 in the bundle.

She is not an expert witness and has not been directed as such under FPR, r.25 on the work undertaken by the EA Agency. She confirmed that the family had been referred to the project since 20 June 2016 following disclosure from the mother and children that FGM procedure had been completed on them, raising concerns that the new-born daughter could be the subject of the same procedure. The report is described as a brief report to disseminate results of the holistic therapy and of the FGM awareness sessions the family had been involved in. The report therefore goes into detail as to the parents beliefs and evaluates their understanding of the harmful practice, both parents indicating a better understanding having little knowledge prior to the start of the process. In addition there was work with G's older sisters.

There was an evaluation of the parents' commitment to protecting their daughter who were described as loving and caring parents with the parents demonstrating cooperation and commitment to safeguard their girls. The parents were described as being adamant that G

would not undergo the procedure now or in the future and I was told a written agreement confirming the completion of the care plan had been signed. The said agreement was not attached to the report nor produced.

The report concludes that there is a strong desire to cooperate and that the author was happy to say that there is no immediate risk for G to undergo FGM as both parents clearly understand the danger of the practice on their daughter and are now fully aware of the UK legislation on FGM.

The further report of 23 March 2017 deals with the beliefs of the parents and evaluation of their understanding of the harmful practice of FGM. There is a further evaluation of the commitment to protect with a positive conclusion as to the demonstration and willingness to cooperate and safeguard. There is a repetition of the conclusion in the early report that there is no immediate risk. The report further indicates that additional work will be carried out with the family particularly G's older sisters in the summer holidays.

The Local Authority advocate asked some additional questions of this witness and described about the benefits to the young person of identifying the form of FGM that had been undertaken as well as the preparation of the relevant children for examination. She described the mother's description of the cut to the clitoris. She agreed that this was one form of FGM being the least severe of the four types of mutilation. She agreed that if it was more severe it would make a difference and the best way of establishing this is by physical examination. She said that she had taken at face value the level of FGM.

Under cross examination the witness was taken through the amount of work and sessions which been undertaken and the package used. She was asked about disguised compliance and the sudden shift in value and belief but not attending core meetings. She described the need to be flexible to meet the family's needs and how she always urged the physical examination and the need to prepare for such an examination as this could cause more trauma but in the long term it would give a better understanding with the benefit of knowing.

She said there had been no objective evaluation but other factors could militate against a medical examination.

She confirmed that as a result of the age of the child, cutting generally taking place when a girl is of school age there was no current risk to the baby and taking into account education insight and history no immediate risk. She said there was no risk because the baby was not of school age and described the general risk as very low.

She told me that with the work done they were 90% covered against the risk which was low but she could not say there was no risk, it was a very low risk. She referred to the understanding and discussed again the lack of medical examination and discussed the process the legislation and the effect of the spiritual leader's pronouncement.

She gave a graphic account of the usual method of FGM.

She described the high social pressures and the conflict. She said she was trained in risk assessment as a result of her NHS training.

Findings

In weighing all the circumstances and having regard to the submissions, and as already set out above, I have decided that it is important that findings are made. I do so both on the evidence I have heard but also on the papers filed including the parents' statements affording them such weight as I consider appropriate.

The Local Authority's evidence was the subject of cross examination and I found the Local Authority witness, the current social worker to be clear. Miss D of the EA Agency was not a court appointed expert pursuant to part 25 of the FPC and her role was to educate the parents on behalf of the Local Authority. The social worker is a trained expert who I have found to be an excellent expert. Miss D's role was to educate and support. As such where there is any difference between the two I prefer the evidence of the social worker.

The effect of the parents not giving evidence was that they could only rely upon their cross examination of the witnesses called and the witness statements filed by them, to which I give such weight as I feel appropriate. I have detailed the acknowledgements and admissions above, which upon the factual issues are largely consistent with the Local Authority's case.

I have rejected the parents' submission that findings should not be made. In a case such as this it is important that the court makes the findings it can on the evidence. In making these findings I have done so by weighing the evidence that I have heard and read and applying the appropriate test I make the following findings. The standard of proof is balance of probability.

The parent's failure to give oral evidence appears upon the submissions to be motivated by a fear of referral to the police if adverse admissions are made. It was suggested that until the hearing they have proceeded upon the basis the matter had previously been investigated by the police and no further action had been taken. I was told that following advice after the hearing on the 19th April and upon considering the form of warning referred to above they decided not to submit themselves to cross examination.

I reject the submission that they cannot have known of a possibility of referral to the police. Their own statements acknowledge this and that FGM is wrong.

In addition I remind myself that taking children abroad for the purpose of FGM became an offence in 2015. By my calculation G's youngest sibling was taken the year before this in 2014.

Further it was submitted on behalf of the parents that an order, and if there was any subsequent prosecution, would be likely to further drive this practice underground. I reject that submission. This is a profoundly disturbing practice and if exposed my view is that the court is duty bound, as is any Authority becoming aware of this intolerable practice, to deal with it openly. I remind myself that these children have yet to be medically examined primarily because of the resistance of their parents which itself prevents diagnosis and treatment.

The further submission made was that cutting may not fall within part IV. In this case I reject any suggestion that a cut to even the tip of a clitoris without any proper explanation is anything other than mutilation. The LA's advocate in dealing with any amendments has drawn my attention to the lack of definition of mutilation, in particular the lesser form. I have

already decided that any mutilation is intolerable and having regard to the definition of the WHO of type 4 which is;

> *Type **4:** This includes all other harmful procedures to the female genitalia for non-medical purposes, e.g. pricking, piercing, incising, scraping and cauterizing the genital area.*

The parents submit as follows in response to the draft judgment;
It is contended on behalf of the respondent parents that it is not necessary to describe the procedure in question as "mutilation" and where that term is used in the context of findings made about the procedure undergone by the older siblings and mother, it should be replaced with a description of the procedure that the judge has concluded has taken place on the evidence.
It is clear that the mother's acceptance that there was cutting at least falls within this definition. This was originally reported by the children. However the lack of medical evidence prohibits any further diagnosis. Her acceptance that *'a tiny part of the tip of my elder 3 children's clitorises were cut'* evidences damage. The evidence of Miss D in giving a graphic description of children being held down and mutilated without anaesthetic was harrowing to listen to. This general evidence was not challenged. It is clear to me that it is open to the court to conclude from the totality of the evidence that the cutting of the clitorises of these young girls amounted to mutilation. I have made the findings on the evidence.

Having weighed the evidence I make the following findings. I do so on the basis of either the admissions of the parents and/or the clear evidence of the Local Authority, both written and oral;

1. G's older sisters have been the subject of FGM which, as described by the mother, involved cutting their clitorises. The full nature and extent of the cutting is not known save as set out above, cutting of the clitoris.

2. The parents have refused to cooperate to have the older children medically examined notwithstanding the mother's acknowledgement of the potential effect of FGM as set out in her statement.
3. The failure to have the children medically examined, or encourage medical examination in the older siblings, is harmful to the children in that there has been no proper assessment of the extent and nature of the admitted mutilation. This is not only clear from the current social worker's statement but also Miss D's.
4. The lack of information from medical examination on the older children as to the extent of the mutilation prohibits proper treatment and is therefore harmful and potentially harmful to the needs of the older children. This evidences a lack of cooperation and disguised compliance.
5. The lack of cooperation with regard to the medical examination of the older children evidences a lack of acceptance of the extent to which the children may have been harmed and that the matter should be properly investigated. The parents' protestations that they will not subject G to FGM is undermined by their approach to the older girls' examination.
6. The lack of cooperation with regard to the medical examination evidences a lack of acceptance of the seriousness of the mutilation.
7. On 3 separate occasions the older children were each taken abroad to be mutilated even though the father felt uneasy about it. They were subjected to this intolerable unacceptable abuse, the mutilation of G's youngest sister having taken place only 3 years ago.
8. The parents knew that the mutilation was unlawful, the most recent mutilation being undertaken on G's youngest sister was approximately three years ago in 2014. I do not accept on the evidence that it is only recently they have realised it is. They have lived in this country for 20 years. This is in addition to the finding in 8 above.
9. The parents did not accept until late 2016/early 2017 that the said mutilation was wrong. The evidence in the parents' statements was conflicting.
10. The effect of the cultural pressure overrode the mother's maternal instinct and in each case notwithstanding that maternal instinct but as a consequence of religious and cultural pressure the mother facilitated the mutilation of her children.
11. There has only recently been what appears on the face of it to be an acceptance notwithstanding that the educational charity the EA Agency still believe there to be a risk albeit a low one of repetition. I have already found there is disguised compliance.

12. The risk assessment undertaken by the educational charity the EA Agency is of a 10% risk of repetition. The court cannot accept any risk of such a serious nature. Even a 10% risk of repetition of FGM is intolerable.

13. The expert opinion provided in this case by the social worker is that an order is needed to protect G which is supported by the other professionals who have been involved in the case.

14. The parents were resistant to the work being undertaken and that resistance continues as a consequence of failure to seek proper medical assessment of their daughters.

15. The cultural pressure on the parents, particularly in their country of origin, would be enormous and has previously overridden the parents' desire to protect their children. That cultural pressure still exists in their country of origin -and undoubtedly in this country.

16. The mother has professed a desire to speak out about FGM but to date there is no evidence she has done so.

17. The EA Agency are not a court appointed expert and their role was mainly educational.

18. The father maintained that FGM was not a central tenet of his faith. Notwithstanding this and whilst feeling uneasy he allowed it to occur on 3 separate occasions. It must therefore be reasonable to conclude he bowed to social pressure on those 3 occasions.

Analysis

The parents in this case concede that the order made by His Honour Judge Allweis should continue. They withdrew their objection to the continuation of the order at the hearing on the 26th April 2017. As such an analysis of the evidence, save in so far as I have done so for the purpose of the findings above, is to agree with the parties that the order should continue as sought until further order.

Any risk of FGM is intolerable, even a 10% risk. Children must be protected from this utterly unacceptable practice, this gross abuse of human rights.

I accept in all the circumstances on the evidence and in light of the findings that the order is necessary to protect G.

However there was an additional matters I had concerns about. That related to the medical examination of the children. Having heard submissions on this issue I am satisfied that appropriate steps are being taken by the Local Authority to deal with this and no further intervention from the court is necessary or appropriate.

Decision

The decision that flows is to continue the order.

His Honour Judge Jordan