FEMALE GENITAL MUTILATION: ITS PREVALENCE AND THE PROTECTION AFFORDED BY THE PRESENT LAW

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"FGM is an evil practice internationally condemned and in clear violation of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. It is a repulsive practice…deleterious to women's health." [1]

[1] Per Arden LJ in *Fornah v Secretary of State for the Home Department* [2005] EWCA Civ 680, [2005] 2 FLR 1085

What is Female Genital Mutilation (FGM)?

1. Some potential for confusion might arise with regard to a definition of FGM as there are differences between the World Health Organisation (WHO) definition and that provided by UNICEF.

2. The WHO definition is to be found in "Eliminating Female Genital Mutilation" which was published by the WHO in 2008[2]. Annex 2 defines FGM as:

   (a) **Type I**: Partial or total removal of the clitoris and/or the prepuce (clitoridectomy). When it is important to distinguish between the major variations of Type 1 mutilation, the following subdivisions are proposed:

      (i) **Type Ia**, removal of the clitoral hood or prepuce only; and

      (ii) **Type Ib**, removal of the clitoris with the prepuce.

   (b) **Type II**: Partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora (excision). When it is important to distinguish between the major variations that have been documented, the following subdivisions are proposed:

      (i) **Type IIa**, removal of the labia minora only;

      (ii) **Type IIb**, partial or total removal of the clitoris and the labia minora; and

      (iii) **Type IIc**, partial or total removal of the clitoris, the labia minora and the labia majora.

   (c) **Type III**: Narrowing of the vaginal orifice with creation of a covering seal by cutting and appositioning the labia minora and/or the labia majora, with or without excision of the clitoris (infibulation). When it is important to

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2 https://apps.who.int/iris/bitstream/handle/10665/43839/9789241596442_eng.pdf;jsessionid=CF4E9CC686E4F97B70F2E16CE3FADBB6?sequence=1

distinguish between the variations in infibulations, the following subdivisions are proposed:

(i) **Type IIIa**: removal and apposition of the labia minora; and

(ii) **Type IIIb**: removal and apposition of the labia majora.

(d) **Type IV**: Unclassified: All other harmful procedures to the female genitalia for non-medical purposes, for example, pricking, piercing, incising, scraping and cauterisation.

3. Reference to the WHO Fact sheet N241 as to Female Genital Mutilation (updated in February 2016)[3] reflects similar classification to that which was previously identified by the WHO in that FGM remains classified into 4 major types:

(a) **Type 1**: 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).

(b) **Type 2**: 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).

(c) **Type 3**: 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).

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

[3] http://www.who.int/mediacentre/factsheets/fs241/en/

4. For reasons that are not altogether clear, UNICEF uses a different classification to the WHO classifications set out above. The UNICEF classification[4] encompasses four main categories:

    (a) cut, no flesh removed;

    (b) cut, some flesh removed;

    (c) sewn closed; and

    (d) type not determined/not sure/doesn't know.

5. These categories do not fully match the WHO typology. *Cut, no flesh removed* describes a practice known as nicking or pricking, which is currently categorised as Type IV. *Cut, some flesh removed* corresponds to Type I (clitoridectomy) and Type II (excision) combined. And *sewn closed* corresponds to Type III, infibulation.

6. The issue of the use of different classifications of FGM has been considered in the Family Court by the then President of the Family Division (Munby P) when he indicated:

    "*Knowledge and understanding of the classification and categorisation of the various types of FGM is vital. The WHO classification is the one widely used. For forensic purposes, the WHO classification, as recommended by Professor Creighton, is the one that should be used.*"[5]

7. Therefore, it would seem sensible for all professionals to utilise the WHO classifications as opposed to the less widely used classifications provided by UNICEF. The need for a uniform approach as to nomenclature and classification is essential, both in a clinical and forensic setting.

8. Outside of the formal classifications and descriptions set out above, there are a number of ways in which FGM is variously informally described, amongst other

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[4] *"Female Genital Mutilation/Cutting: A statistical overview and exploration of the dynamics of change*, UNICEF (July 2013), page 48

[5] ***In the Matter of B and G (Children) (No 2)* [2015] EWFC 3**, paragraph 79(ii)

things, as female circumcision, cutting, Sunna, gudniin, halalays, tahur, megrez and Khitan.

9. Subject to the type of FGM that has been undertaken surgery can sometimes be appropriate. Descriptions that suggest that such surgery is a "reversal" are inappropriate as no surgery is able to replace any removed tissue or repair the damage caused by FGM.

The Incidence of FGM

10. The reported incidences of FGM that are actually recorded are thought to be only the 'tip of the iceberg'. The practice of FGM is properly described as child abuse but is an immensely complex topic involving deeply entrenched practices and beliefs that is often seen by those who practise it as a non-abusive 'cultural practice'.

11. Some worldwide statistics are available from FORWARD.[6] Statistics indicate that it is estimated that up to 200 million girls and women worldwide have undergone FGM across approximately 30 countries.[7]

12. The age at which a girl or woman undergoes FGM varies as between countries of origin but is thought to be between infancy and age 15 and before puberty.

13. FGM is broadly concentrated in countries from the Atlantic Coast to the Horn of Africa. Within those countries there is a wide variation in the estimated percentages of girls and women who have undergone FGM. The countries identified to have the highest percentage of girls and women who have undergone FGM include Somalia (98%), Guinea (96%), Djibouti (93%), Egypt (91%), Eritrea (89%), Mali (89%),

[6] FORWARD (Foundation for Women's Health Research and Development) is an African led Women's Rights Organisation whose work focuses on FGM, child marriage and other forms of violence against women and girls that impact on the health, dignity and wellbeing of African women and girls. *Annual Report 2017-2018 Driving Social Change: Communicating our Message Creatively (FORWARD 2018)*
[7] UNICEF 2016

Sierra Leone (88%) and Sudan (88%). These estimates and those for other countries are provided by UNICEF.

14. In terms of England, research undertaken in 2015[8] indicated that there were an estimated 137,000 women and girls affected by FGM in England and that 60,000 girls under the age of 15 were at risk of FGM.

15. As part of the Department of Health and Social Care's FGM prevention programme, statistics regarding the prevalence of FGM in England are produced in the form of published datasets. In the *'Female Genital Mutilation (FGM) Enhanced Dataset'* published by NHS Digital on 6 December 2018[9] the following key findings were identified:

    (a) There were 1,630 individual women and girls who had an attendance where FGM was identified or a procedure related to FGM was undertaken in the period April 2018 to June 2018. These accounted for 2,025 attendances reported at NHS trusts and GP practices where FGM was identified or a procedure related to FGM was undertaken.

    (b) There were 925 newly recorded women and girls in the period July 2018 to September 2018. Newly recorded means this is the first time they have appeared in this dataset. It does not indicate how recently the FGM was undertaken, nor does it mean that this is the woman or girl's first attendance for FGM.

16. Wherever the statistics may derive from, it is likely that the prevalence of FGM is likely to be far higher in England than those that are identified by the statistics. As indicated above, the practice is deeply entrenched in some communities and is not viewed as abusive by those that undertake it. Much work is currently underway, by FORWARD and others, in terms of educative work to try and re-educate as to the

[8] *Prevalence of Female Genital Mutilation in England and Wales: National and local estimates,* Alison Macfarlane and Efua Dorkenoo (City University London, July 2015)
[9] https://digital.nhs.uk/data-and-information/publications/statistical/female-genital-mutilation/july-september-2018

harm that this practice causes and that it should not be viewed as a social and/or cultural norm.

17. If FGM does not take place in England then girls and young women may be taken from England to their countries of origin for FGM to be undertaken. This more often than not happens during the lengthy summer holidays to allow them to 'heal' before their return to school.

Criminal Law

18. The undertaking of FGM is a clear violation of the absolute right pursuant to Article 3 of the ECHR[10] which states that no one will be "subjected to torture or to inhuman or degrading treatment or punishment". It is a human rights violation and a form of child abuse, breaching the United Nations Convention on the Rights of the Child.

19. Female Genital Mutilation was first criminalised in the United Kingdom under the **Prohibition of Female Circumcision Act 1985**. This was replaced by the **Female Genital Mutilation Act 2003**, which updated the offence of carrying out FGM, or assisting a girl to carry out FGM on herself. Section 1 of the Female Genital Mutilation Act 2003 states:

Offence of Female Genital Mutilation

1. *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.*

2. *But no offence is committed by an approved person who performs–*

(a) *a surgical operation on a girl which is necessary for her physical or mental health, or*

[10] ***Fornah v Secretary of State for the Home Department*** **[2005] EWCA Civ 680**

(b) *a surgical operation on a girl who is in any stage of labour, or has just given birth, for purposes connected with the labour or birth.*

3. The following are approved persons–

(a) *in relation to an operation falling within subsection (2)(a), a registered medical practitioner,*

(b) *in relation to an operation falling within subsection (2)(b), a registered medical practitioner, a registered midwife or a person undergoing a course of training with a view to becoming such a practitioner or midwife.*

4. There is also no offence committed by a person who–

(a) performs a surgical operation falling within subsection (2)(a) or (b) outside the United Kingdom, and

(b) in relation to such an operation exercises functions corresponding to those of an approved person.

5. For the purpose of determining whether an operation is necessary for the mental health of a girl it is immaterial whether she or any other person believes that the operation is required as a matter of custom or ritual.

20. Section 1 and 2 of the 2003 Act make it an offence for any person within England and Wales to carry out FGM, or to assist a girl to carry out FGM on herself.

21. Section 3 states it is illegal for someone from within the UK to assist a non-UK national to carry out FGM outside the UK on a UK national or permanent UK resident. Section 4 of the 2003 Act makes it an offence for a UK national or permanent resident to carry out or perform FGM abroad, assist a girl to perform FGM on herself abroad or to assist a non-UK national to perform FGM on a UK national or permanent UK resident abroad.

22. To reflect the serious harm caused by FGM, the 2003 Act increased the maximum penalty for any of the FGM offences from five to fourteen years imprisonment.

23. There is no statutory definition of the term "mutilation" and instead the definition provided by the Oxford English Dictionary is likely to be applied to cases of alleged FGM (whether in the context of a criminal case and/or a family case):[11]

> *"The Oxford English Dictionary defines "mutilation" as meaning "the action of mutilating a person or animal; the severing or maiming of a limb or bodily organ", "mutilate" being defined as meaning "To deprive (a person or animal) of the use of a limb or bodily organ, by dismemberment or otherwise; to cut off or destroy (a limb or organ); to wound severely, inflict violent or disfiguring injury on."*

24. Following the introduction of the 2003 Act, problems began to arise in a small number of cases whereby the Crown Prosecution Service (CPS) were unable to prosecute because the victims did not meet the criteria of permanent UK residence required by the legislation. In order to address this issue, further reform was introduced in the form of the Serious Crime Act 2015.

25. Section 70(1) of the Serious Crime Act 2015 amended section 3 and 4 of the 2003 Act to cover prohibited acts done outside of the UK *by* a UK national or person resident in the UK and acts of FGM done *to* a UK national or person resident in the UK. Essentially these changes permit the 2003 Act to capture offences of FGM committed abroad by or against those who are at the time habitually resident in the UK, irrespective of whether they are subject to immigration restrictions. The question of habitual residence is a question of fact for the Court in each case. There is no provision at this stage to deal with those participating in FGM who are only temporarily and not habitually resident in the UK.

26. Notwithstanding the introduction of the Female Genital Mutilation Act 2003 and the amendments introduced by the Serious Crime Act 2015, there has been much criticism of the application and effectiveness of the criminal law relating to FGM.

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[11] Per Munby P, ***In the Matter of B and G (Children) (No 2)*** **[2015] EWFC 3** at paragraph 12

In particular, the number of prosecutions actually undertaken has been vanishingly small (4) and up until February 2019 there were no convictions in England & Wales. That situation changed in February 2019 when there was the first successful prosecution of a 37 year old Ugandan mother for an offence of FGM for which she will be sentenced on 8 March 2019. Reports suggest that the mother has been warned by the trial judge to expect a "lengthy" jail term.

27. The CPS does not collate formal statistics in relation to FGM but instead holds a manual record. Reference to the data held by the CPS[12] indicates that there have only been 36 referrals since records began in 2010. Of those 36 referrals received by the CPS, 33 of them did not proceed to charge as it was concluded that there was insufficient evidence to provide a realistic prospect of conviction. Of the three remaining cases, two of them were charged with FGM but both were acquitted at trial and the remaining case was charged a child cruelty but the defendant was acquitted on the direction of the judge.

28. Interestingly, to date, there have been no prosecutions for breach of an FGM Protection Order (FGMPO).

29. On any version of events, one successful prosecution does not suggest that the criminal provisions are effective in preventing FGM. It is plain, given the very small numbers involved in the criminal process, the route by which FGM is more likely to be addressed is via the range of Orders available in the Family Court (which are considered below).

Failing to Protect

30. Section 72 of the 2015 Act inserts a new section 3A into the 2003 Act. This creates a new offence of failing to protect a girl from FGM. In effect if an offence of FGM is committed against a girl aged 16 or under, the person or persons with responsibility for her at the time of the offence will be guilty of the offence of failure to protect. The maximum penalty is seven years imprisonment, a fine or both.

[12] *Violence Against Women and Girls,* Crown Prosecution Service, 26 September 2018

Duty to Notify

31. Section 74 of the 2015 Act inserts a new section 5B into the 2003 Act which created a new mandatory reporting duty requiring specified regulated professionals in England and Wales to report 'known' cases of FGM in under 18's, which they identify in the course of their professional work, to the police. This duty applies from 31 October 2015 onwards. Section 5B of the 2003 Act states:

Duty to notify police of female genital mutilation

(1) A person who works in a regulated profession in England and Wales must make a notification under this section (an 'FGM notification') if, in the course of his or her work in the profession, the person discovers that an act of female genital mutilation appears to have been carried out on a girl who is aged under 18.

(2) For the purposes of this section–

(a) a person works in a 'regulated profession' if the person is –

(i) a healthcare professional,

(ii) a teacher, or

(iii) a social care worker in Wales;

(b) a person 'discovers' that an act of female genital mutilation appears to have been carried out on a girl in either of the following two cases.

(3) The first case is where the girl informs the person that an act of female genital mutilation (however described) has been carried out on her.

(4) The second case is where–

(a) the person observes physical signs on the girl appearing to show that an act of female genital mutilation has been carried out on her, and

(b) the person has no reason to believe that the act was, or was part of, a surgical operation within section 1(2)(a) or (b).

(5) An FGM notification-

(a) is to be made to the chief officer of police for the area in which the girl resides;

(b) must identify the girl and explain why the notification is made;

(c) must be made before the end of one month from the time when the person making the notification first discovers that an act of female genital mutilation appears to have been carried out on the girl;

(d) may be made orally or in writing.

(6) The duty of a person working in a particular regulated profession to make an FGM notification does not apply if the person has reason to believe that another person working in that profession has previously made an FGM notification in connection with the same act of female genital mutilation. For this purpose, all persons falling within subsection (2)(a)(i) are to be treated as working in the same regulated profession.

(7) A disclosure made in an FGM notification does not breach –

(a) any obligation of confidence owed by the person making the disclosure, or

(b) any other restriction on the disclosure of information.

32. This duty does not apply in relation to at risk or suspected cases or in cases where the woman is over 18. In these cases, the local safeguarding procedures should be followed.

33. Useful Guidance was issued by the Home Office in 2016 regarding mandatory reporting and this is likely to be a good point of reference for professionals requiring

clarification of their duties under section 5B.[13] Of particular note is the helpful inclusion of a process map at Annex A that will aid the busy frontline professional as to whether the mandatory reporting duty applies.

Family Law

34. There are a range of potential interventions available in the Family Court in the event that there is evidence to suggest that a girl has undergone FGM or is at risk of FGM. These include:

    (a) removal of a child using powers of police protection (pursuant to section 46(1) Children Act 1989);

    (b) an emergency protection order (pursuant to section 44 Children Act 1989);

    (c) care or supervision orders (pursuant to section 31 Children Act 1989);

    (d) an order made under the inherent jurisdiction of the High Court (in particular, wardship); and

    (e) a FGM protection order.

Police Protection Order

35. In the event that a constable has reasonable cause to believe that a child would otherwise be likely to suffer significant harm, he may remove the child to suitable accommodation and keep him there or take such steps as are reasonable to ensure that the child's removal from any hospital, or other place, in which he is then being accommodated is prevented. Such an order may last no more than 72 hours.

36. In the case of ***Re B and G (Children) (No 2)*** **[2015] EWFC 3**, the President held that any form of FGM constitutes "significant harm" within the meaning of sections 31 and 100 of the Children Act 1989. In doing so, he cited ***Re B (Care Proceedings:***

[13] Mandatory Reporting of Female Genital Mutilation-procedural information: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/573782/FGM_Mandatory_Reporting_-_procedural_information_nov16_FINAL.pdf

***Appeal)* [2013] UKSC 33, [2013] 2 FLR 1075**, at para 185 and the judgment of Baroness Hale of Richmond, "*that any form of FGM, including FGM WHO Type IV, amounts to 'significant harm*."

Emergency Protection Order (EPO)

37. Similarly, a local authority that considers that there is evidence to suggest that a girl has undergone FGM or is at risk of FGM would be able to apply for an EPO. That evidence would be more than likely to be sufficient to satisfy the statutory test that there would be reasonable cause to believe that the child is likely to suffer significant harm if she is not removed to accommodation provided by or on behalf of the local authority or she does not remain in the place in which she is then being accommodated.

Care or Supervision Order

38. Once again, a local authority that considers that there is evidence to suggest that a girl has undergone FGM or is at risk of FGM would be able to issue care proceedings and to seek an interim care order (section 38 Children Act 1989). In the event that the court found the local authority's case to be proved regarding a child having undergone FGM or being at risk of the same being undertaken, then the threshold criteria pursuant to section 31(2) of the Children Act 1989 will be established. The court will then go on to consider what, if any orders, are required to be made having regard to the welfare of that child being paramount and applying the welfare checklist.

39. In the context of care proceedings, the comments of Munby P[14] are apposite in that there is a dearth of medical experts in the area of FGM (particularly in relation to young children) and specific training and education is "highly desirable". Munby P also took the opportunity in the context of care proceedings to provide specific guidance on the manner in which examinations in the context of FGM ought to take place:

[14] Ibid. ***In The Matter of B and G (Children) (No 2)*** at paragraph 79(i)

(a) *"Careful planning of the process of examination is required to ensure that an expert with the appropriate level of relevant expertise is instructed at the earliest opportunity. Wherever feasible, referrals should be made as early as possible to one of the specialist FGM clinics referred to by Professor Creighton. If that is not possible, consideration should be given to arranging for a suitably qualified safeguarding consultant paediatrician to carry out an examination recorded with the use of a colposcope so that the images can be reviewed subsequently by an appropriate expert.*

(b) *Whoever is conducting the examination, the colposcope should be used wherever possible.*

(c) *Whoever is conducting the examination, it is vital that clear and detailed notes are made, recording (with the use of appropriate drawings or diagrams) exactly what is observed. If an opinion is expressed in relation to FGM, it is vital that (a) the opinion is expressed by reference to the precise type of FGM that has been diagnosed, which must be identified clearly and precisely and (b) that the diagnosis is explained, clearly and precisely, by reference to what is recorded as having been observed."*

Inherent Jurisdiction

40. Given the raft of other potential interventions set out above it is likely to be a rarity that a local authority will be required to make an application for an order under the inherent jurisdiction. Such an application is most likely to involve an application to make the child a ward of court and is likely to involve cases with an international element.

41. For those cases where the local authority obtains the leave of the court (section 100(3) Children Act 1989) to invoke the inherent jurisdiction this will remain available in the armoury of potential interventions available to the local authority.

FGM Protection Orders

42. Section 73 of the 2015 Act inserted a new section 5A into the Female Genital Mutilation Act 2003 and provided for the making of Female Genital Mutilation Protection Orders (FGMPOs).

43. These orders can be made to protect a girl against the commission of a genital mutilation offence or to protect a girl or woman against whom an offence has been committed. The terms of such an order can be broad and flexible and enable the court to include whatever terms it considers necessary and appropriate to protect the girl. They can be made on the application of the girl concerned or by a third party. Local authorities and the police are likely to be such applicants. The court may also make such orders of its own motion, both in family and criminal proceedings. For examples of such orders being made in the Family Court see the cases of ***Re E (Children) (Female Genital Mutilation and Permission to Remove [2016]* EWHC 1052**, ***Re Z (A Child) (FGMPO: Prevalence of FGM)* [2017] EWHC 3566 (Fam)** and ***A Local Authority v M & N (Female Genital Mutilation Protection Order-FGMPO)* [2018] EWHC 870 (Fam)**.

44. The case of ***Re E*** above is an interesting example of the risks associated with the making of without notice orders where the court is necessarily reliant on the veracity of the account given by the applicant and is very much getting 'one side of the story'. FGMPOs were made in that case at without notice hearings (see ***Re E (Children) (Female Genital Mutilation Protection Orders)* [2015] EWHC 2275 (Fam)**) but at the on notice fact finding and welfare hearing the court found that the mother had not been subjected to FGM at the hands of the paternal family and that the father had not intended to take the subject children to Nigeria and dismissed the mother's application for FGMPOs.

45. The case law and statutory provisions relating to the making of FGMPO's has usefully been very recently considered by the Court of Appeal in the case of ***X (A Child FGMPO)* [2018] EWCA Civ 1825**. This is said to be the first time that the provisions of the Female Genital Mutilation Act 2003 have been considered by the Court of Appeal. The Court of Appeal identified that the Female Genital Mutilation Act 2003 was very broad and provided no real guidance as to the approach the court should take when determining whether and, if so, in what manner to exercise its powers (see paragraphs 23-24). Therefore, the Court of Appeal considered that the

case provided an opportunity to consider the approach the court should take to an application for a FGMPO including, for example, the relevance of the paramountcy principle. In considering the broader issues, Moylan LJ stated:

> "*31. Before turning to the parties' submissions, I make the following observations. I would agree that, as referred to by the judge in this case, the rights engaged by both Article 3 and Article 8 of the European Convention on Human Rights will clearly be relevant to the exercise by the court of its powers to make an FGMPO. I would also agree that, when deciding how to exercise its powers, the court must balance a number of factors. The court will have to consider the degree of the risk of FGM (which, I would suggest, needs to be at least a real risk); the quality of available protective factors (which could include a broad range of matters including the court's assessment of the parents); and the nature and extent of the interference with family life which any proposed order would cause.*
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> *32. The need for specific analysis balancing these and other relevant factors extends to any additional prohibitions or other terms the judge may be considering including in the FGMPO. This is because each term included within the FGMPO must be separately justified. In this exercise, although the nature of the harm would, self-evidently, be a breach of Article 3, it is the court's assessment of the degree or level of the risk which is central to the issue of proportionality and to the question of whether a less intrusive measure, which nevertheless does not unacceptably compromise the objective of protecting the child, might be the proportionate answer.*
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> *33. This reflects (and, in part, adopts) what Lord Reed JSC said, when dealing with proportionality, albeit in a very different context, in Bank Mellat v HM Treasury (No 2) [2014] AC 700. I propose to quote only the last two elements he identified when setting out that its "attraction as a heuristic tool is that, by breaking down an assessment of proportionality into distinct elements, it can clarify different aspects of such an assessment, and make value judgments more explicit" (paragraph 74 of his judgment on the substantive appeal):*

> *"... it is necessary to determine ... (3) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and (4) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter ... I have formulated the fourth criterion in greater detail than Lord Sumption JSC, but there is no difference of substance. In essence, the question at step four is whether the impact of the rights infringement is disproportionate to the likely benefit of the impugned measure."*

> *34. If section 1(1) of the Children Act 1989 applies the child's welfare will be the court's paramount consideration. In some respects this legal issue may be of secondary importance because, in any event, the order being made by the court will be intended and, I would suggest, should be designed to protect and promote the child's welfare."*

46. Figures insofar as the number of FGMPOs that have actually been made by the family court are still small given the apparent prevalence of the issue of FGM. The most recent statistics[15] indicate that in July to September 2018 there were 36 applications and 48 FGMPOs made. Those statistics also indicate that since July 2015 (the date which FGMPOs came into force) there have been a total of 292 applications and 296 FGMPOs made.

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[15] Family Court Statistics Quarterly (July-September 2018) published 13 December 2018