

# **A Barrister's Perspective on the Challenges of Applying for FGM Protection Orders**

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Developing excellence  
in response to FGM and  
other harmful practices



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Charlotte is a human rights barrister at Goldsmith Chambers specialising in family law and immigration law. Charlotte was awarded a doctorate from the University of Cambridge in 2017 following research about FGM law and policy in England. Recently, Charlotte has been appointed as an expert in FGM asylum cases to Refugee Legal Aid Lawyers representing refugees globally. You are welcome to contact Charlotte to seek guidance on FGM cases.

As a barrister experienced in applying for FGM Protection Orders on behalf of local authorities and parents, I am aware of the challenges that professionals encounter in gathering evidence to support the application. In this article I intend to outline examples of the relevant evidence required to support an application for an FGM Protection Order.



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*If you would like to know more about FGM Protection Orders you can search for the forms on our [knowledge hub](#) and via the gov.uk website (<https://www.gov.uk/female-genital-mutilation-protection-order>)*

*For more information on Charlotte Proudman, please visit her [website](#).*

## *What are FGM Protection Orders?*

FGM Protection Orders were introduced into family law to prevent and protect girls and women at risk of FGM (see schedule 2 to the Female Genital Mutilation Act 2003, which was inserted by section 73 of the Serious Crime Act 2015).

The terms of such an order can be broad and flexible, which enable the court to include whatever terms it considers necessary and appropriate to protect the girl.

These include, for example, provisions requiring a person to surrender his or her passport. Breach of the order is a criminal offence. See Part 11 of the Family Procedure Rules 2010 for guidance on making an application.



## *Threshold for an application*

While the numbers of FGM Protection Orders applied for has increased since the enactment of legislation, the orders still remain underutilised. It is well known that FGM continues to be performed upon British habitual residents and British nationals/citizens in the UK and abroad.

FGM Protection Orders can extend to prohibiting conduct inside and outside England and Wales (see section 1(4) of Schedule 2 of the Female Genital Mutilation Act 2003). Public authorities are often under the misapprehension that there is an extraordinarily high threshold to make the application or that the threshold is akin to applying for an interim care/supervision order. This is incorrect. Section 1(2) of Schedule 2 of the Female Genital Mutilation Act 2003 states:

*“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”.*

This test needs to be considered carefully and addressed within the application and the accompanying statement of the applicant.

However, the threshold is not equivalent to the threshold within care proceedings. The orders granted are distinct. An order should be applied for where there is concern that FGM could be performed upon a protected person in England and Wales and/or outside of the jurisdiction and this can be addressed within a witness statement. The raft of legal remedies available are designed to prevent child abuse. Practitioners can seek advice from the National FGM Centre and other NGOs specialising in FGM.

## *Evidence required to support an application*

The evidence available often depends on whether the application is made on notice or without notice (ex-parte). Applications are sometimes made without notice in circumstances where, for example, there is an imminent risk of a protected person being cut or being removed from the jurisdiction or there is a well-founded fear that putting the respondents on notice of the application could result in abuse or violence.

Applications made without notice are often made in haste ,therefore gathering requisite evidence can be a challenging task. If an application is made ex-parte the most

important information is usually within the applicant's witness statement. Where there is limited time to gather evidence, it can be helpful to set out in the statement the further evidence that the applicant will obtain in due course; this could be for example, medical reports and/or minutes from children's services' meetings and/or confirmation of a child's disclosure of FGM etcetera.

Where an application is made on notice, which means the named respondents are informed that an application has been made and they will be invited to attend the court hearing, there is usually ample opportunity to gather and file relevant evidence.



## *Relevant evidence to support a case can include:*

\*The list below is not intended to be exhaustive.\*

- 1) **Medical reports** confirming that the protected person has or has not been cut;
- 2) **Minutes from children's services' meetings** which explain why there is a fear that the protected person could be cut;
- 3) Where there has been involvement from a specific social worker, **the social worker ought to strongly consider providing a witness statement** outlining for example their involvement with the child and family, the risks present and the steps taken to address such risks;
- 4) **Witness statements from family members/friends/professionals**, which identify the risk. For example, where threats have been made to remove the protected person from the jurisdiction and there are witnesses to confirm the same, such witnesses should be invited to file statements to support the application.
- 5) **Flight tickets/information** confirming a family intend to leave the jurisdiction;

- 6) Information from the protected person's **education institution** confirming any disclosures made or concerns raised by professionals about the child's behaviour;
- 7) Where the protected person and/or her family's immigration status is insecure it might be helpful to provide the court with copies of documentation from the Secretary of State confirming the **person's immigration status to date and any on-going proceedings**. This could assist where there is risk of imminent deportation.

This list is merely a starting point for laypersons and professionals intending to make an application for an FGM Protection Order. Often, the only evidence available to support the application is the applicant's witness statement. This should not deter applicants from making an application. Violence against women and girls often occurs in the private sphere, in the home, where obtaining evidence and independent witness statements is challenging to say the least.

Courts' understanding of the intimate nature of violence and the difficulty in evidencing abuse is slowly starting to expand. Without external evidence, the judge will determine applications on the basis of background material and the credibility of witnesses. As the applicant, you should be prepared to give evidence at a court hearing if required by the judge.