

# FORCED MARRIAGE & FGM PROTECTION ORDERS

*Dr Charlotte Proudman*  
*Barrister, Goldsmith Chambers*  
*Junior Research Fellow, Queens' College, Cambridge*

# FORCED MARRIAGE

- ▶ A forced marriage is where one or both people do not (or in the case of some people with learning or physical disabilities cannot) consent to the marriage. Typically pressure or abuse by family or the wider community is applied to force the marriage to take place. It is legally defined as a person being forced "to enter into a marriage without one's free and full consent". The person forcing the marriage can either be a party to the marriage or a third person (section 63A(4), Family Law Act 1996 (FLA 1996)).
- ▶ Marriage is interpreted as being a religious or civil ceremony (whether or not legally binding) (section 63S, FLA 1996).

# FMPO

- ▶ The *Forced Marriage (Civil Protection) Act 2007* introduced provisions into the *FLA 1996* ([section 1\(2\)](#), *Forced Marriage (Civil Protection) Act 2007*) to protect a person:
  - ▶ From being forced into a marriage.
  - ▶ From any attempt at being forced into a marriage.
  - ▶ By providing protection and assistance if already forced into a marriage.See, ([Section 63A\(1\)](#), *FLA 1996*.)
- ▶ In deciding whether to make a FMPO the court must:
  - ▶ "Have regard to all the circumstances including the need to secure the health, safety and well-being of the person to be protected" ([section 63A\(2\)](#), *FLA 1996*).
  - ▶ Consider the wishes and feelings of the person to be protected, so far as they are ascertainable and it is appropriate to do so in the light of that person's age and understanding ([section 63A\(3\)](#), *FLA 1996*).

# FMPO – who can apply?

- ▶ There are three categories of people who can apply for a FMPO:
  - ▶ The victim or person who is to be protected (section 63C(2)(a), FLA 1996). There is no age limit so a child could apply.
  - ▶ A relevant third party (section 63C(2)(b), FLA 1996) as specified by order of the Lord Chancellor.
  - ▶ On 1 November 2009 local authorities were designated as a relevant third party (Family Law Act 1996 (Forced Marriage) (Relevant Third Party) Order 2009 (SI 2009/2023)).
- ▶ Any person with leave of the court (section 63C(3), FLA 1996).

# FMPO – Breach

- ▶ In the event that there is no reasonable excuse for a breach of a FMPO the court can impose both:
- ▶ A fine not exceeding level 5 on the standard scale, currently £5,000 (section 37, Criminal Justice Act 1982).
- ▶ A term of imprisonment not exceeding six months; or
- ▶ (Paragraph 7 , Schedule 1, Forced Marriage (Civil Protection) Act 2007.)

# FGM

- ▶ Estimated that over 130,000 women and girls are living with FGM and over 60,000 girls are at risk of FGM.
- ▶ FGM involves four types of FGM, see <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation>
- ▶ FGM can result in care proceedings, see *Re B and G (Children) (No 2)* [2015] EWFC 3.
- ▶ FGM was criminalised in 1985. There has only been one conviction for FGM which was in 2019.
- ▶ Motivations for FGM vary enormously.
- ▶ Often there is a overlap between FGM cases and families without immigration status in the UK.

# FGMPO

- ▶ Bar of Human Rights Committee recommended the introduction of FGMPOs modelled on FMPs.
- ▶ The government introduced FGMPOs in 2015 pursuant to the Serious Crime Act 2015. See Schedule 2 of the FGM Act 2003.
- ▶ Over 400 orders have been made since the introduction in 2015 to 2019.
- ▶ Not intended to be punitive in nature unless the orders are breached.
- ▶ Intention is to protect girls/women at risk.
- ▶ Support can be received from the FGM Unit in the Home Office & National FGM Centre (Barnardos).

# Section 1, Schedule 2, FGM Act 2003

(2) 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.

(3) An FGM protection order may contain—

- (a) such prohibitions, restrictions or requirements, and
- (b) such other terms,

as the court considers appropriate for the purposes of the order.

(4) The terms of an FGM protection order may, in particular, relate to—

- (a) conduct outside England and Wales as well as (or instead of) conduct within England and Wales;
- (b) respondents who are, or may become, involved in other respects as well as (or instead of) respondents who commit or attempt to commit, or may commit or attempt to commit, a genital mutilation offence against a girl;
- (c) other persons who are, or may become, involved in other respects as well as respondents of any kind.

# FGMPOs: Important points to note

- ▶ No threshold to apply for FGMPO.
- ▶ FGMPOs can curtail conduct overseas not only in this jurisdiction.
- ▶ Cautious approach taken when the protected person does not have immigration status but is said to be at risk of FGM. The Family Court cannot curtail the Home Secretary's immigration powers. See Newton J's decision in Suffolk CC v RD and others [2020] EWHC 323 (Fam) and the President's decision in Re A (A Child: Female Genital Mutilation: Asylum [2019] EWHC 2475.
- ▶ Travel ban cases involve consideration of macro and micro risk factors. See Cobb J's decision in Re X (Female Genital Mutilation Protection Order. No.2) [2019] EWHC 1990 (Fam).

# Contact Details

Senior Family Clerk: Alex Nunn

**E-mail** [a.nunn@goldsmithchambers.com](mailto:a.nunn@goldsmithchambers.com)

