



Response to the Home Office's Draft Multi-Agency Statutory Guidance on Female Genital Mutilation (for consultation)

About Rights of Women

Rights of Women specialises in supporting women who are experiencing or are at risk of experiencing, gender-based violence, including domestic and sexual violence. We support other disadvantaged and vulnerable women including Black, Minority Ethnic, Refugee and asylum-seeking women (BMER women), women involved in the criminal justice system (as victims and/or offenders) and socially excluded women. By offering a range of services including specialist telephone legal advice lines, legal information and training for professionals we aim to increase women's understanding of their legal rights and improve their access to justice enabling them to live free from violence and make informed, safe, choices about their own and their families' lives.

Rights of Women is a registered charity 1147913 and Company Limited by Guarantee.

Rights of Women's consultation response

Before answering the specific questions asked in the consultation we would point out that as a women's legal organisation we will confine our responses to law and legal policy issues within our skills and experience. On all other issues arising from FGM we are led by the specialisms of BMER organisations and their expertise. We understand that FORWARD will make a substantive response to this consultation and would refer you to that response for expert analysis of the guidance as a whole.

Response to Consultation Question 4

Q4. Do you agree that the draft statutory guidance captures the full range of legal tools and interventions to enable professionals and public sector organisations to safeguard and protect women and girls at risk of FGM?

Access to the new Female Genital Mutilation Protection Orders is dependent on the availability of legal advice and representation for the victim/survivor. The guidance should make it clear that legal aid may be available (subject to the means and merits test) for FGMPO proceedings and that there is no fee for issuing an application for an FGMPO.

It is disappointing that if an adult interested party (perhaps an aunt or a sibling, a teacher or a doctor) wishes to apply for an FGMPO or an FMPO to protect a child in relation to FGM or forced marriage, their applications for legal aid are both means and merits tested. Adults who are willing to expose themselves to significant criticism and sometimes to significant risk from

their own families and communities in order to seek to protect a child, should have access to non means tested legal aid. They should also be offered special measures when making applications to mitigate any risk or pressure they may experience as a consequence of their application. This is perhaps even more vital with FGM than with forced marriage as the victims of FGM are rarely old enough to make their own applications. At page 6 of the draft guidance there is a lack of clarity about the definition of 'parental responsibility'. This should include any person who is named on the girl's birth certificate. The guidance may wish to refer readers to Rights of Women's legal guide [Children and the law: parental responsibility](#) for further information.

At page 17 there is an error in the language used to describe a Prohibited Steps Order. It is not a Prohibitive Steps Order. The guidance may wish to refer readers to Rights of Women's legal guide [Children and the law: when parents separate](#) for further information on these orders.

In respect of its description of the legal options available, the guidance could be clearer about the different civil law options available and in which circumstances each route might be appropriate. In addition we believe it is important for the guidance to include information about the additional powers of the High Court under its Inherent Jurisdiction as these offer additional protection which the Family Court cannot. The guidance should also make reference to the availability of the Tipstaff in the High Court. The Tipstaff work with the police to execute orders and can arrest non-compliant respondents and take them into custody. If there is an imminent risk of a child being removed from the jurisdiction for the purposes of FGM, the court can order for example that the child's parents surrender their passports. In such circumstances it could be better for the application to be made to the High Court. The High Court will make Tipstaff orders and the Tipstaff will arrange for the police to attend the parents' address and serve the orders. If the parents fail to surrender the passports the police can arrest them and take them into custody, for the matter to be returned to the High Court the next day. This is not the case if the passport orders are made by a District Judge. The Tipstaff can also place port alerts and can execute collection orders if a child is to be removed from their family's care to a place of safety.

If a girl under the age of 16 years old has been removed or is at risk of being removed from the jurisdiction, the Applicant should make an application for an FGMPO from the High Court. The Applicant might consider at the same time making an application in Wardship and under the Inherent Jurisdiction for the child to be made a Ward of Court (by which order the court gives itself a parental responsibility for the child which overrides the existing parental responsibility of the parents). Through the simultaneous issuing of Wardship proceedings the court can also consider other issues regarding the child's welfare such as where a child should live, if appropriate.

If the girl or woman is over 16 years old and has been removed from the jurisdiction or is at risk of being removed against her consent, the application should again be made in the High Court. The Applicant should make an application for an FGMPO. By making the application in the High Court the court has additional powers under its Inherent Jurisdiction to protect the vulnerable adult, as discussed above.

If the woman or girl remains in this jurisdiction and is not at risk of being imminently removed, the application for an FGMPO can be made to the family court at county court level. If there are additional issues regarding the child's care arrangements or welfare which need to be addressed, the application can be made in conjunction with an application under the Children Act 1989. If the only issue of concern is the risk of FGM to the girl, then an application for an

FGMPO will suffice and is more appropriate order than a Specific Issue Order, not least because the application does not incur a fee.

The guidance may wish to refer to the justice.gov.uk website for more information on the [powers of high court and role of the Tipstaff](#). If it would be helpful, Rights of Women are happy to assist in the redrafting of this section of the guidance.

At section 5.2.1 on FGMPOs it might be helpful to make it clear that this civil route is available to all those who may wish to seek legal protection for a woman or girl or for themselves, but without criminalising the perpetrators (to whom they are most likely related). Professionals (and through them, the public) should be made aware that whilst FGM is a serious crime, it is possible to access help without reporting to the police. If FGM is reported to the police, the police will investigate it as a crime. However, if a person makes an application to the Family Court, either with or without the assistance of a family lawyer, the orders sought will be for the protection of the woman or girl rather than for the punishment of the perpetrator. The perpetrators will only be arrested or sentenced by the Family Court if they breach the court's orders. The guidance should also make clear that there are now reporting restrictions which prohibit the publication of any matter which would be likely to identify a victim of FGM and it is an offence to contravene this prohibition. The prohibition lasts for the lifetime of the alleged victim. The issue of anonymity is likely to be of concern to the women and girls involved.

In terms of the procedure for applying for an FGMPO it could be helpful to include that an FGMPO needs to be personally served on the respondent(s) and that it is the duty of the applicant (or their solicitor) to ensure this happens (NB the Tipstaff serve their own orders). A person cannot be responsible for breaching any part of the FGMPO unless they have been personally served – usually by a process server or court bailiff. The guidance may wish to refer readers to Rights of Women's legal guide Female Genital Mutilation and the Law, which will be available in hard copy and on our website in the next couple of weeks.

Section 5.6 of the draft guidance states that you can only make urgent applications between 10.30 and 2 pm at the Family Division of the High Court. This is not strictly accurate. Application can be made out of hours to the duty judge if it would be too late if you were to wait for the next time that the court is sitting: The [Practice Direction 12e](#) deals with urgent business

Finally, we note that an FGM Unit is to be set up. However, the FGM Unit appears to be more limited in terms of its functions and powers than the Forced Marriage Unit (FMU). Unlike the FMU it is not proposed that the FGM Unit will provide the service of rescuing victims held against their will overseas. Its focus appears to be limited to policy work and it does not provide direct assistance to individuals who are seeking help. It is noted that the NSPCC has been given the contract for providing the telephone advice but unlike the International Child Abduction and Contact Unit (ICACU) or the FMU the NSPCC does not have the international contacts or the powers of the foreign office to assist in seeking the return or establishing the safety of a woman or child who has been removed from this jurisdiction for the purposes of FGM. As it is a crime which is largely committed abroad, this seems inadequate.

Rights of Women

30 September 2015