



New Park Court

## Family Briefing

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'Very experienced in complex public law children cases.' **Legal 500 2018**

## Family Briefing - Edition 3 by Valerie Sterling

### Ex parte applications for female genital mutilation protection orders pursuant to Part 1 of Schedule 2 to the Female Genital Mutilation Act 2003.

The author has recent experience of successfully applying ex parte for protection orders on behalf of a mother seeking to protect her daughters from being removed from England and Wales for the purposes of FGM. Leave to be sought to bring such an application?

Further to Rule 11.2 of the Family Procedure Rules 2010 an application for such a protection order may be made without notice and in such circumstances, it must be supported by a witness statement explaining why notice has not been given.

The person to be protected ('PTBP') and a local authority may apply for an FGM protection order without permission but all other persons require permission. It follows that strictly speaking a concerned mother who fears that her daughters are at risk of being taken abroad for the procedure technically requires leave to bring such an application. Under Part 1 of Schedule 2 to the Female Genital Mutilation Act 2003 an application for leave to apply for a Female Genital Mutilation (FGM) Protection Order must therefore be lodged with the court in readiness for the ex parte hearing.

In Re E (Children) (Female Genital Mutilation Orders) (2015) 2 FLR 997,FD, the mother of the girls needed permission to apply for an order without notice.

The applicant must set out her reasons for applying on behalf of the persons to be protected stating briefly her reasons including her connection with the person to be protected and what she knows of the circumstances of the person to be protected.

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### Venue?

The Family Court at Circuit Judge level rather than the High Court should be appropriate.

### Parties?

See FPR Rule 11.6 – where the person who is the subject of proceedings is not the applicant and is a child, the court must consider at every stage in the proceedings, whether to make that child a party to the proceedings. See paragraph 7 of PD16A in this respect – ie Part 4, paragraph 7.2 (f) – there are unusually complex issues that necessitate separate representation of a child. Hence, the subject children will become parties to the case and be represented by a solicitor and by a Children’s Guardian.

### Travel impinged

Any such order will impinge on travel arrangements sought for the children and the parents.

See also Re X (A Child) (Female Genital Mutilation Protection Order) (Restrictions on Travel) (2017) EWHC 2898 (Fam), a decision of Russell J where the FGM protection order was continued and restrictions were placed on the child’s travel outside the UK. That was a High Court case in which the local authority, Hertfordshire County Council, brought an application against the parents of a girl then aged 15 months and the child was represented by her guardian as third respondent. She was born in England to a white English mother while her Egyptian father had remained in Egypt where her parents had met and the case arose because of concerns about the risk of the child suffering FGM should she be taken to Egypt.

The prohibition on travel can be contained within the FGM protection order without the need for a separate prohibited steps order under the Children Act 1989.

### Non-molestation Order

In addition to the FGMPO, a non-molestation order in the usual terms may also be made.

### Personal Service of such orders

There is a need for there to be personal service of the FGMPO and non-molestation orders; and for a return date within three to four weeks to be obtained.

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