

Advocacy in Action: Female Genital Mutilation Protection Orders (FGMPO)

30 June 2021

Browne Jacobson Barristers celebrated their 10th Anniversary in December 2020. Over the coming editions of *Be Connected*, our team of qualified barristers will be reflecting on their extensive experience at hearings before Courts and Tribunals nationwide, to identify key issues and lessons for education providers. This, the fifth in the *Advocacy in Action* series, will consider the issue of Female Genital Mutilation Protection Orders (FGMPO) and the importance of acting promptly.

Female Genital Mutilation (FGM) is a procedure which intentionally alters and/or causes injury to female genital organs for non-medical reasons. FGM is illegal in the UK but is still practised in communities worldwide. The NHS FGM Annual Report published 23 July 2020, cited that 6,590 individual women and girls attended an NHS trust or GP practice between April 2019–March 2020 where FGM was identified. As FGM is hidden in nature, it is anticipated that many cases go unreported and/or unnoticed.

Given the prevalence of FGM and the risk to many girls of school age, it is becoming everyone's responsibility to promote and protect girls from such harm. It also forms part of every school's safeguarding duties and is becoming embedded within relationships education, which is now compulsory for primary school pupils. 'Keeping Children Safe in Education (2020)' specifically alerts schools about raising concerns in respect of FGM. Sadly, it is an area in which schools may in future have experiences of detecting and acting upon risks. Schools should become more alert to those pupils who may be vulnerable, the warning signs and alerting the relevant individuals. The Met Police 'Guidance for Schools and Colleges: Safeguarding Young People from Sexual Violence, CSE and Harmful Practices' highlights that it is mandatory to report to the police known or disclosed cases of FGM towards girls under 18. This is now a legal duty placed on Teachers pursuant to s.74 Serious Crime Act 2015, which has amended the Female Genital Mutilation Act 2003.

The Female Genital Mutilation Act 2003 makes a person guilty of an FGM offence if they:

- a.mutilate the whole or any part of a girl's or woman's genitalia;
- b.assist, aid, abet, counsel or procure a girl to mutilate her own genitalia; or
- c.assist, aid, abet, counsel or procure a person who is not a UK national or resident to do relevant acts of FGM outside the UK.

The Act also brought into force FGMPOs, an order containing legally binding conditions to protect a person at risk of FGM. This can include an order preventing an individual from removing a child from the UK. An application for an FGMPO can be made if:

- a.an individual believes they are at risk themselves;
- b.FGM has already been committed on the individual;
- c.you are aware someone is at risk of FGM.

An application can be made by (a) the girl who is to be protected (b) a relevant third party (c) any other person with leave from the court. Schools fall within the latter category, requiring permission from the Court.

Browne Jacobson Barristers were contacted by a School to assist in obtaining an FGMPO following concerns relating to Pupil A. This was the first and/or one of the first times a school had sought an order of this type, putting Browne Jacobson at the heart of society's big issues.

Pupil A had had a recent period of absence and the School was concerned by inconsistent information provided by her parent, Parent A. Parent A had suggested to the School that Pupil A was absent due to a family bereavement, due to which they had to fly to Parent A's native country. The School were informed Pupil A would be absent for one week; however, she did not return after the stated time. The School was then provided with conflicting information by a third party regarding Pupil A's whereabouts and, as such, involved additional organisations in order to locate Pupil A.

During this period, the School's Designated Safeguarding Lead had attended training in respect of FGM hosted by the police and had become aware of FGMPOs. She had also conducted research regarding Pupil A's native country and found there to be a high prevalence of FGM. In light of this and the conflicting information regarding Pupil A's whereabouts, there was concern that FGM was planned or may have been performed on Pupil A. The DSL therefore made an urgent application for an FGMPO and an interim order was issued pending a final hearing.

Whilst an application for an FGMPO comes at no cost to issue with the court, the process can be somewhat intimidating for those without a legal background, particularly given the specific rules on serving on the Respondents and ensuring the correct evidence is provided. These applications also tend to take place in the High Court with the Applicant attending to give evidence.

Our Associate, Holly Quirk of Browne Jacobson Barristers, was instructed not only to attend the final hearing, but also to support the DSL in producing a detailed witness statement for the court, setting out her concerns and supporting evidence. This included further information she had received since the initial order, which included an update from Pupil A who, again, had provided conflicting information to the School when she had returned from her absence.

At the final hearing one of Pupil A's parents, Parent B, was in attendance and able to answer the Court's queries. The DSL also attended; however, the Court was satisfied with the detailed statement provided and no further oral evidence was required. Following submissions to the Court, we were successful in obtaining a FGMPO. The Court made a further order for seizure of the pupil's passports, with a request to be made directly to the Court should there be a reason for the pupil to leave the country.

We continued to assist the School in the wake of the Hearing, by liaising with Parent B to explain the order, ensuring the order was served personally on the Respondents in line with the legal requirements, and liaising with third parties, including the police and the tipstaff, to ensure the relevant steps were made to secure passports. This meant that the School did not have to worry about the detailed procedures and requirements.

This case highlights the importance for Schools to be alert to current and future safeguarding issues, particularly in cases of FGM, which may not be as obvious. The quick acting and thorough thinking of the DSL in this case meant that actions were taken quickly, and provisional steps made to safeguard a pupil who may have been at significant risk. In cases that have such a significant safeguarding aspect and seek to protect pupils, legal representation can make what can be a stressful and confusing process more streamlined, providing the legal knowledge to attend and make relevant submissions to the court, but also the support in handling the pre-hearing and post-hearing actions. Given the serious nature of the FGMPOs and the protection they provide, thorough evidence detailing the School's concerns will benefit the court greatly. In addition, many of the pre- and post-hearing actions are required to be actioned within short timeframes and by following a specific process; for example, service of the order must be executed in person, often requiring a third party to action, followed by formal confirmation being provided to the court.

Browne Jacobson Barristers regularly appear in a wide range of Education matters, including at inquests, Disability Discrimination Act claims, EHC Appeal hearings and Independent Review Panel hearings for exclusions for both schools and local authorities.

Our team of barristers also provides specialist advice and advocacy services to the Department for Education and Further Education settings, and specialise in disciplinary proceedings.

You can instruct one of our barristers either through Browne Jacobson's Education Team or by contacting our Lead Clerk, Claire Ward-Smith, at Barristers@brownejacobson.com or on 0330 045 2323.

Contact

Holly Quirk

Barrister (Senior Associate)

holly.quirk@brownejacobson.com

+44 (0)330 045 2777

Related expertise