Neutral Citation Number: [2024] EWHC 2808 (Fam)

CASE NO: FD23P00618

IN THE HIGH COURT (FAMILY DIVISION)

IN THE MATTER OF THE CHILDREN ACT 1989

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 5th November 2024

Before:

THE HONOURABLE MS JUSTICE HARRIS DBE

Between:

AS (the Child's Mother)	**Applicant**
-and-	
LONDON BOROUGH OF WALTHAM FOREST	**1st Respondent**
-and-	
MA (the Child's Father)	**2nd Respondent**

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Adam Kayani (instructed by Amna Khaliq and Kauser Fadal of Wilson's Solicitors) for the **Applicant**

Olivia Bliss (instructed by the London Borough of Waltham Forest's Legal Team) for the **1st Respondent**

Mr MA (litigant in person) **2nd Respondent**

Hearing dates: 15th – 16th October 2024

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Judgment

This judgment was handed down at 10:30am on 5th November 2024 by circulation to the representatives by e-mail and by release to the National Archives.

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This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Ms Justice Harris:

1. The applicant in this matter is AS and is the mother of the subject child of these proceedings, M, who is now 17 years old. M will be 18 in July 2025. The applicant is represented by Mr Kayani. The first respondent is the London Borough of Waltham Forest, represented by Ms Bliss. The second Respondent is M's father, MA. He is not legally represented and has taken no active role in the proceedings. He has however been present throughout. The parents are from Somalia, but have lived in the UK since around 2004/05 having fled civil war in that country.

2. The applicant seeks to discharge a Prohibited Steps Order ('PSO') made by DHCJ Mrs Allison Russell QC (as she then was) which:

    i. Prevented the parents from obtaining a passport or travel documents for M;
    ii. Prevented the parents from removing M from the jurisdiction of England and Wales.

    It is one of the notable and concerning features of this case that nobody has a full copy of that order, neither the parents, the Local Authority nor the Court. It appears to be a PSO under the CA 1989 and not an order under the Female Genital Mutilation Act 2003 and was made for indefinite duration without any mechanism for review.

3. The family had become known to the Local Authority, and the children made subject to a Child Protection Plan, in 2010 due to concerns around sexual abuse in the wider family. It was as a result of those investigations that a risk of M being subjected to FGM came to the Local Authority's attention and the protective orders sought. The family were closed to the Local Authority in 2014, but the protective orders continued.

4. In 2016, the applicant made an unsuccessful application to the High Court to discharge the order. Although there are no papers relating to those proceedings, it is understood that it was determined that at 11 years old the risks to M remained high. In 2018, the Local Authority indicated that they would agree to M obtaining a passport and travelling on a holiday to Disneyland Paris. That agreement was subsequently withdrawn; the Local Authority advising the family that an application to the Court would be required to discharge the order.

5. The current application to discharge the PSO was made in November 2023. The applicant mother continues to seek for the PSO to be removed. She is supported in that by her husband and M (the Child). M has declined to be made a party to these proceedings, but she has filed a statement setting out her clear position.

6. The family say there is no risk of M being subjected to FGM, but that the PSO is having a very significant impact on M's right to travel with friends and family, is impacting on her ability to enjoy normal family life and to undertake religious responsibilities such as participating in pilgrimage abroad.

7. The Local Authority oppose the PSO being discharged.

Background:

8. The applicant mother and her elder three daughters, have all undergone FGM. It is accepted that FGM was a cultural norm in Somalia and widely practised amongst their family and community. M's three older sisters all underwent FGM in 2005 in Yemen. The procedure was arranged by their maternal grandmother whilst they were living under her guardianship and care. The applicant mother was living in the United Kingdom at the time, having left Yemen in 2004 to seek asylum in this country. There is an ongoing dispute between the parties as to what the applicant knew about this and whether she agreed to it. The applicant has been consistent in her position that she is opposed to FGM due to her own experiences and the impact it has had on her health, reinforced by the education she has received around these issues.

Procedure:

9. The matter first came to me for directions in December 2023 when sitting as a DHCJ. The Local Authority were directed to undertake an FGM risk assessment and ensure M accessed any necessary educative work. Following completion of the risk assessment, the Local Authority continued to oppose discharge.

10. At a hearing in March 2024, and due to the perceived inadequacies of the Local Authority's assessment, a Part 25 application was successfully made on behalf of the applicant mother for a further risk assessment by a suitably qualified, culturally competent, independent social worker, with experience of working with Somalian families. Ms Zainab Nur was instructed, a Somali speaking ISW with specialist knowledge and experience of FGM in Somalian communities. She concluded that the risk to M of FGM was non-existent and the PSO should be discharged. Despite that assessment, the Local Authority have maintained their opposition to discharge.

Law:

11. An application to discharge a PSO is governed by s 1 of the Children Act 1989, which makes M's welfare this Court's paramount consideration. In considering M's welfare, competing rights and interests under the European Convention on Human Rights are relevant and engaged, and, in my judgment, constitute a helpful framework for undertaking analysis of the issues.

12. FGM is recognised as a particularly serious and significant form of violence and abuse against women and girls. It engages Article 3 of the European Convention on Human Rights: that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. However, whilst expressed in absolute terms, it is accepted that the Court must always consider the necessity and proportionality of any protective measures pursuant to Article 3, paying close regard to any competing Convention rights and interests which are also engaged: in this case M's Article 8 right to respect for her private and family life, as well as her Article 9 right to freedom of religion. The Court observes at this point the highly draconian and interventionist nature of the order to which M has been subjected: amounting to a worldwide travel ban for 14 years.

Evidence:

13. The court had before it the following written evidence:

    - Three witness statements filed by the Mother in support of her application dated 25th October 2023, 29th February 2024 and 31st May 2024;
    - A witness statement from M dated 13th June 2024;
    - Two statements from the allocated social worker, JS, dated 13th February 2024 and 4th June 2024, alongside a risk assessment dated 13th February 2024;
    - A risk assessment from the independent social worker, Zainab Nur, dated 20th April 2024.

    I have also had the benefit of a detailed report from the organisation FORWARD (Foundation for African Women's Health Research and Development) who carried out educative work with the applicant mother and M's older sisters in 2014.

14. The Court also heard relatively brief oral evidence from the applicant mother, the independent social worker Ms Nur, and the allocated social worker JS. The Local Authority did not seek to challenge M's written evidence, accepting she is a bright, articulate, competent young woman, with very good insight into and understanding of the harms associated with FGM. Their concern is the influence that she may be subjected to by other family members.

Summary of and observations on the evidence:

The Mother:

15. The Mother's understanding is that the identified risk to M is based on the fact her older daughters underwent FGM in Yemen in 2005, whilst in care of their maternal grandmother. However, as noted above, the Mother maintains she has always been opposed to FGM on the basis it caused her significant harm and distress, and from which she has ongoing health issues.

16. The Mother says that she was only made aware in 2010 that her older daughters had undergone FGM when she was asked about it by the Local Authority. The Mother initially denied to the social worker that the girls had been subject to FGM, but upon speaking to the maternal grandmother she was told by her mother that she had arranged for the girls to undergo FGM when in Yemen without notifying her or seeking her consent. In her oral evidence, the Mother detailed that after speaking to her mother she informed the social worker at a Family Group Conference that she was now aware that the older girls had in fact been subject to the procedure.

17. The Mother's statement goes on to detail the impact of the PSO on M. She says M tells her that she feels different to her friends, being unable to go on school trips, being prevented from attending family holidays, including a trip to Disneyland with her sisters, and is upset she does not have access to her passport for ID purposes. M wants to travel with her family and friends and to be able to undertake religious obligations in Saudi Arabia. The lack of a passport has made it difficult for her to apply for college, start driving lessons and to obtain employment. The Mother says that M feels the restrictions imposed on her are unfair. The Mother points out that no work has been done with M by the Local Authority to explain the order, why it is in place and to help her come to terms with it.

18. The Mother has offered undertakings as to specific countries where M should not travel if it would assist remove the restrictions.

19. In my judgment, the Mother gave her evidence calmly, respectfully and with sincerity. Although given through an interpreter, it was free-flowing and she did not waiver at all under challenge. Although she recognised the concerns which led to the making of the PSO, she politely but firmly maintained that the order was unfair because she never had any intention of subjecting M to FGM. Her written and oral evidence have been entirely consistent throughout the proceedings.

20. The Local Authority's cross examination of the Mother focussed upon her decision-making in 2005 which led to her older daughters being subjected to FGM, and the honesty with which she engaged with the local authority thereafter regarding her knowledge of these events. The Local Authority, in short, say it is not credible she did not know anything about the older girls being taken to have FGM by the maternal grandmother and she lied to the local authority about it, thereby undermining professionals' trust in her.

21. The Court understands the concerns of the Local Authority regarding the FGM carried out on M's older sisters in 2005 and mother's apparent lack of knowledge about it, which may on first reading appear improbable. However, the maternal grandmother's actions, and the Mother's claimed ignorance of the FGM, have to be viewed within a cultural context whereby FGM was the cultural and societal norm for the maternal grandmother and not something considered illegal or abhorrent in Yemen. Culturally within Somali communities, circumcision was something that grandmothers would commonly arrange if a child was under their guardianship and care, without consultation or discussion with the family, including the child's mother. As Ms Nur, the independent social worker, helpfully explained, it was not something that would be spoken about between family members following the procedure. It was considered private information and a taboo subject for discussion. Children would frequently be told not to speak about it. The Mother's lack of knowledge of her daughters having been taken for FGM by maternal grandmother looks less improbable when properly viewed within that context. Ms Nur also gave firm evidence that the fact a child had been subjected to FGM would not necessarily be apparent to a mother on physical inspection. With 30 years' experience in the field, Ms Nur would not be confident she could identify a child had been subjected to FGM without examination by an appropriately qualified doctor.

22. Furthermore, the Local Authority's focus on events dating back some 15-20 years, failed to engage at all with the key question for this court which is whether the risk has shifted or changed since the PSO was made in 2012. Risk is dynamic. The issue is whether cultural changes within Somalian communities; the extensive educational work and campaigns around FGM both in this country and abroad; the Mother's direct engagement in that work; and M's own education generally and specifically with respect to FGM, her clear views on the issue and increasing capacity to self-protect, have shifted the risk. The Local Authority's cross examination did not engage at all with those crucial matters.

23. Having carefully considered both the written and oral evidence, I found the Mother to be an honest and credible witness.

Ms Zainab Nur, ISW

24. Ms Nur was instructed as a single joint expert to undertake a further risk assessment following perceived deficiencies in that carried out by the Local Authority.

25. Ms Nur, in her assessment, found M to be a mature 16-year-old with excellent communication skills and benefiting from close, strong family relationships. In her discussions with M, M displayed profound knowledge and confidence about the risks associated with FGM, and was able to clearly articulate the physical and emotional harms, mental health implications, and severe pain and psychological trauma it can cause. Ms Nur was thus confident M had a comprehensive grasp of the health-related risks. M also refuted to Ms Nur that FGM was religiously mandated; indeed, she expressed the view it was inconsistent with the teachings of the Quran. M was also clear it was a criminal offence in this jurisdiction and must not be normalised. She described talking openly with her sisters about FGM and about their experiences. She was able to identify sources of help if any attempts were made to coerce her into the practice outside this jurisdiction. It was thus Ms Nur's view that M had a strong, informed stance on the issue and presented as independent, confident and well versed in her rights, and fully able to advocate for herself.

26. Ns Nur also interviewed M's father. She reported that the Father was clear that FGM was neither Islamic nor culturally acceptable. He fully understood the legal repercussions should he seek to arrange FGM for his daughter.

27. As regards the Mother, Ms Nur found her to have enhanced her knowledge and understanding of FGM since the PSO was made. Ms Nur reports that the Mother demonstrated profound insight into the detrimental impacts of FGM on women and girls and is an active advocate against it. The Mother discussed with Ms Nur the campaigns in London to educate and raise awareness within Somali communities of the harms of FGM and was fully aware of UK laws and regulations. The Mother expressed being able to discuss matters openly with her daughters with whom she has a close, warm and loving relationship. Ms Nur assessed the Mother as being fully able to safeguard M.

28. Ms Nur also spoke with the maternal grandmother. She was displaying cognitive weakness, was very unwell and unwilling to discuss matters in any detail. The Mother reports she has expressed remorse for what happened to M's older sisters. Ms Nur assesses that maternal grandmother poses minimal risk given her current circumstances.

29. It is also noted within the assessment that the wider family largely reside in London and there are a number of girls within the extended family who have not been subjected to the practice.

30. Finally, Ms Nur explains that FGM in Somalia is usually performed on girls below the age of 10 with their mother or grandmother's consent. Once a girl reaches puberty, the cutter would seek the girl's direct consent. She notes that it is unheard of in Somali culture for a 17-year-old to be forced to undergo FGM. In her 30 years working in this field, she has never heard of this happening.

31. Ms Nur therefore concludes that in her professional opinion, the risk to M would be non-existent should the family visit Somalia. She recommends the PSO should be discharged.

32. Ms Nur's risk assessment was, in my judgment, professionally and appropriately conducted. It was undertaken in the Somali language allowing for cultural nuance in the discussion. Ms Nur engaged with M, her parents, her older sister, a paternal aunt who lives in London and the maternal grandmother. It was thorough, cogent and robust.

33. Ms Nur has a wealth of knowledge and experience in this field, both generally on the issue of FGM but specifically with reference to Somali culture. She was part of the original anti-FGM campaigning group established in this country and has worked extensively with FORWARD, including serving as a trustee for a number of years. She is a fully qualified social worker and has engaged in these issues in her role as a frontline child protection social worker, as well as undertaking training and consulting roles. She clearly has significant expertise as to the risks of FGM, its harms, and the socio-cultural, familial context in which it takes place.

34. Ms Nur was at times a little difficult to keep focused on the question as she sought to explain matters from her wealth of experience. However, her expertise and knowledge of the current research and literature in the field, alongside her local knowledge from direct work in communities, was clear and impressive.

35. Ms Nur was critical of the social work risk assessment carried out by JS, including the fact that a Somali interpreter was not used for the Mother. Fundamentally, she expressed the view that JS's assessment was ill-informed and simply wrong on matters of Somali culture and the practice of FGM. She made the powerful point that protective orders can become a force of oppression within marginalised, minority communities if they are based on misunderstanding, assumption, stereotypes and prejudice.

36. The Local Authority do not accept the assessment and recommendations made by Ms Nur, continuing to argue that the PSO should remain in place until M is 18 years old. The court therefore pressed the allocated social worker at the end of her evidence as to the basis on which she rejected Ms Nur's expert view. JS was unable to give the Court an answer.

37. I found the evidence of Ms Nur to be exceptionally helpful, informative, authoritative and persuasive.

JS, Social Worker

38. JS describes M as a friendly, articulate and engaging young person who told her she feels safe at home with her parents. She also describes M as well aware of FGM and the impact of it, observing that she shows maturity, insight and awareness into the risks of the procedure and its emotional and physical impact on young women. M expressed to her that she was against FGM and would never accept the procedure taking place.

39. As regards the impact of the PSO, M described to the social worker the various things she has missed out on and expressed feeling let down by the courts and the Local Authority for holding her back. The social worker notes that she is very upset when she cannot travel with her family.

40. The parents told the social worker that they have not made any plans to take M abroad to undertake FGM and they do not believe in the practice. The Mother was clear to the social worker that she had no knowledge of the older girls being subjected to the procedure when in the maternal grandmother's care in Yemen and felt let down by her mother. The Mother told the social worker that she believed M was in any event now too old for FGM within Somali culture, and it is not a common practice for Somali girls living in the UK.

41. Following her assessment, the social worker identified the following specific risk factors:
    - M's older sisters had undergone the procedure.
    - The Mother wanted to take M to Dubai to meet the maternal grandmother in 2012, despite maternal grandmother arranging for the FGM of the older children. In the Local Authority's view this demonstrated a lack of insight.
    - Mother was not transparent in initially denying the FGM of the older girls to professionals.
    - Mother had made applications to revoke the order in 2016, possibly in 2018, and again in 2023.

42. JS acknowledges that M is upset by the inability to travel and the lack of a passport but concludes that in her assessment M's health and wellbeing is more important than travelling outside the UK. In reaching that view, she notes that M has a clear understanding of FGM and the risks due to her own research on the issue and conversations she has had with family and friends. She also notes that M was clear to her that she has never been subjected to persuasion, pressure or bribes to have the procedure. Indeed, JS concludes, in her words: "*M has been very clear that she will not have FGM performed on her, and I am confident that she will not allow this to happen*".

43. However, JS goes on to observe that she is not so sure about the parents given the tradition within Somalian culture and that parents may not be able to shift their views. It is not clear on what evidence obtained within her assessment she reaches that position regarding parents' views. JS also goes on to opine that the fact M has not undergone FGM may carry a stigma, with M being seen as unclean, bringing shame to the family, and being regarded as unfit to marry. In her oral evidence, JS was unable to explain on what basis she had formed that opinion.

44. Following her assessment, JS concludes that the risk to M of being subjected to FGM in the UK is very low, but high if she were taken out of the jurisdiction.

45. Following the subsequent risk assessment by the independent social worker, JS's view remained unchanged. She reiterated that the operation can still be performed at M's age and there was still a risk of this happening. She continues to assert that M may be "*manipulated, moulded and influenced*" by her parents and questions how M could then keep herself safe. She expresses concern that there may be disguised compliance by the parents. There is no detail as to how she has formed that view of the parents, on the basis of the assessment she conducted with them. It contrasts with that of Ms Nur who regarded the parents as engaging honestly and transparently.

46. It is with some regret that the Court has to observe that the evidence of the social worker was exceptionally poor.

47. The Court does not doubt that the social worker has approached this matter with the best of intentions: of wanting to protect M from any risk at all of FGM given the abhorrent nature of the practice, and so it is her view that M should remain subject to a protective order until she is 18 years old. But any protective orders imposed by the State which restrict an individual's freedoms and liberties must be based on an informed and evidence-based analysis of the risk the orders are intended to protect against. If the risk is not properly and carefully assessed, protective orders can simply become a form of unjustified oppression; not the protection of a child's rights and welfare they were intended to be.

48. Sadly, in my judgment, JS's assessment of risk and her evidence to this court was fundamentally flawed:
    - In answering questions, by counsel for the Mother, she was very defensive, at times argumentative and bordered on rude. I understand giving evidence, even for professionals can be extremely stressful, but her tone and demeanour were inappropriate.
    - The social worker was also clearly very poorly prepared to give evidence. She claimed a number of times that she could not remember important matters which informed her assessment because it was all some time ago. I would have expected any professional coming to give evidence on a matter of this importance and gravity to have read fully in preparation, not just the bare assessment but the records and notes that underpin it. She was thus unable, for example, to tell the court exactly what research she had considered, what the research told her and how it had informed her assessment. She was similarly unable to recall exactly what direct work she had done with M, having been invited to undertake such work by the Court.
    - There were also clear gaps in her written evidence. The risk assessment is very short and superficial in its analysis. It lacks detail, and the recommendations and conclusions reached lack properly evidenced foundation. If what she told the court was correct and she had better informed herself to carry out this assessment by undertaking online research about FGM and speaking to nurses at Whipps Cross hospital, none of that is documented in her report so that the reader can understand the quality and scope of the material on which she has drawn to form her recommendations. Similarly, she has not documented her conversations with the family members she did speak to, possibly an older sister and M's younger brother. Those discussions are clearly relevant given her position that the risks to M emanate from pressure within 'the family'. The beliefs, attitudes, behaviours and quality of the relationships within M's immediate family are thus of direct relevance to the assessment of risk. JS's response: that her discussion with family members was not relevant as the risk assessment was about M, was clearly illogical in that context.

- Her oral evidence was also at points confused and contradictory. Notably, given the reliance placed on this issue by the Local Authority, having been taken carefully through the evidence by Mr Kayani she accepted there was no basis to say mother had been dishonest in 2010 about her knowledge of the FGM perpetrated on her older daughters. However, JS then subsequently back-tracked on that concession, continuing to cite mother's dishonesty as a risk factor which had informed her overall assessment.
- The social worker's treatment of Ms Nur's report was also deeply concerning. Having received the report of Ms Nur, it should have been clear to the social worker that her assessment of risk, even if well-intended, had been erroneously based on assumptions and misunderstandings about Somali culture, the practice of FGM within Somali communities and thus the current risks to M. Those errors were clearly and robustly reiterated by Ms Nur in her oral evidence. Sadly, however, there is no evidence that the social worker has at any point in this process, including during this final hearing, engaged in any professional reflection and reconsideration of her position having received and heard the evidence of Ms Nur. Indeed, during her oral evidence, JS continued to perpetuate her errors and misunderstandings regarding FGM in Somali communities to justify her own preferred assessment of the risk. That was despite JS frankly accepting that this is her first FGM case, in contrast to Ms Nur, a jointly instructed independent social worker with 30 years' experience in the FGM space. JS could give no proper reasoned basis for why the Local Authority did not defer to the views and recommendations of Ms Nur, other than they just wanted to keep M safe.

49. In her closing submissions, Ms Bliss urged upon the court that the Local Authority had found this to be an immensely difficult case given the gravity of the issue. She told the Court that the Local Authority had felt unable to agree to the discharge of the order, it being a matter which should properly be decided by the Court. She described the authority as risk adverse given the enormity of the harm caused by FGM and their desire to keep M safe. Whilst I commend the authority for that openness, it is not in my judgment a defensible position to put before the Court.

50. FGM is of course a very serious form of gender-based violence and abuse. It causes profound harm. But that does not excuse professionals from properly and carefully assessing the risks in each case on the basis of the individual facts, and within the child's particular socio-cultural and familial circumstances, accurately understood. The Local Authority have made no proper attempt to do that in this case. In my judgment it is clearly incumbent on them to do so and to put careful, soundly based reasoned recommendations to the court.

51. Furthermore, whilst of course the local authority is properly concerned with its obligations and responsibilities to protect M from harm, indeed it is mandated to do so under Article 3 of the European Convention, that cannot be the end of their analysis. The local Authority's obligations and responsibilities to M run deeper than this; there are other rights, interests and potential harms engaged. The Local Authority have given no proper consideration to those fundamental matters. The significant impact of the current restrictions on M is acknowledged, but they are not weighed and balanced in the overall decision-making. M's Article 8 and Article 9 rights are not identified as such, and the necessity and proportionality of the ongoing restrictions are not assessed in light of the presenting level of risk and the countervailing interference with M's competing rights and freedoms. The social worker's ignorance regarding the importance of M being able to travel to Saudi Arabia to carry out core religious obligations in accordance with her Muslim faith, was telling as to the lip service paid to the impact of the ongoing restrictions on key aspects of M's life: fundamental rights and freedoms which also call for protection and respect by the State. It is incumbent on all public authorities to properly inform themselves of these issues and to carry out the careful balancing of interests required.

52. In summary, the position adopted by the local authority lacked any sophistication. There was no properly informed and evidence-based analysis of current risk. Indeed, the Local Authority's position was based on ill-informed assumption and stereotype. Nor was there any attempt to carry out the careful balancing of M's competing rights and interests that was required. The Local Authority have simply not asked themselves the critical question: whether the ongoing draconian interference with this young woman's rights and freedoms is necessary and proportionate to keep her safe?

53. I find myself unable to place any weight on the evidence of the social worker.

M – the Subject Child:

54. Although the Court did not hear from M, and she has not been made a party to these proceedings, it is extremely important her voice is heard. She has attended every court hearing.

55. It is abundantly clear from the unchallenged evidence that M is a bright, articulate, educated young woman. She has excellent insight into and understanding of FGM and the associated risks. M is clear that her mother has never spoken to her in support of FGM, telling her it is not a religious practice and should not be normalised. M says her mother has shared her own experiences of FGM and that she is able to speak openly to her sisters about it.

56. In her statement to the Court, M says that she has felt trapped for years; she has not been able to experience what her friends and siblings have been able to experience. She describes being made to feel like an outcast, and that she does not belong to this society. She notes in striking terms that the Local Authority have exerted so much power over her life without ever understanding her, or her religion. She feels it amounts to an abuse of power.

57. These are very powerful words from a British-Somali young woman that need to be taken with the utmost seriousness. I reiterate what I said at the outset of this judgment: how a well-intentioned measure of protection can become a means of gender oppression, denying women and girls within this country their autonomy and freedoms.

Decision and conclusions:

58. Before I turn to my decision, I reiterate again that FGM is an abusive, violent and abhorrent practice with very significant implications for girls' and women's mental and physical health. But that is no justification for not engaging in proper informed analysis of whether an individual child or woman is at risk. State power should only be used to impose onerous restrictions on the rights and freedoms of a young woman if it can be demonstrated it remains necessary and proportionate to do so in her best interests.

Broader context of risk to M:

59. FGM has been an entrenched and prevalent feature of Somali culture. Mother was subjected to FGM. M's older sisters were subjected to FGM. But the evidence of Ms Nur is crucial in understanding the present-day cultural context in which the risk of FGM for Somalia girls exists. No culture is static, and Ms Nur told the court that attitudes and practices have evolved considerably in the last 30 years. Educational campaigns in Somalia and within Somali communities in the UK have significantly shifted societal attitudes, such that FGM does not remain the prevalent and widespread practice it once was. There are many girls who are not now circumcised. Ms Nur was clear that not being circumcised carries no stigma or shame and does not impact on a young woman's prospects of marriage.

60. Furthermore, where the practice continues, Ms Nur explained that it is carried out by a trained cutter, assisted by a number of female family members, on pre-pubescent girls. FGM would not be performed on older girls because of recognised issues around medical complications and healing. As Ms Nur set out in her report, FGM on a young woman of M's age is unheard of. Her consent would be required even if a cutter were willing to contemplate it. She firmly reiterated that in her oral evidence.

Particular risk factors specific to M:

61. The court turns to each of the Local Authority's identified risk factors in turn.

M's mother and older sisters have undergone FGM.

62. That is accepted. However, the shift in cultural attitudes within the Somali community discussed above is repeated. Moreover, AS has been clear and consistent throughout the Local Authority's involvement that she is opposed to FGM based on her own difficult experiences. She has furthermore always been clear that she never intended or planned for her daughters to undergo FGM, and that the maternal grandmother made the arrangements without her knowledge and consent. The court accepts that to be an open and honest account, and it accords with Ms Nur's evidence regarding practice within Somali culture.

Mother wanting to visit maternal grandmother in Dubai with M in 2012.

63. The Local Authority's position seems to be that due to the actions of the maternal grandmother in 2005, the Mother should not want to maintain a relationship with her mother or expose M to her. That in my judgment is to ignore the importance of this family relationship for the Mother and M, and to fail to understand the cultural context in which maternal grandmother acted. Whilst the Mother was upset and disappointed by her mother's actions, it would not be viewed – given the prevalence of FGM within Somali culture at the time - as such behaviour that core family relationships would be fractured. Furthermore, the Mother was clear that as she would be with M at all times, there could be no risk of FGM taking place.

Parents' dishonesty with professionals in 2010.

64. There is no evidence that the parents were dishonest with the Local Authority in 2010 about the older girls being subjected to FGM. In fact, as accepted by the social worker during her oral evidence, the evidence points the other way. The Mother has given a clear and consistent account of what she knew, and how the information came to be disclosed to professionals. She has remained clear that she did not know about the FGM until prompted by the social worker to telephone her mother and ask. Having done so, she then volunteered the information to professionals during the family group conference in October 2010. The Local Authority have no evidential basis to challenge that account.

65. As discussed above, Ms Nur's evidence was also again helpful in this regard, explaining that it would not be unusual for children to be told not to speak about the FGM, including to their mother; for family members not to discuss it at all either before or after it had taken place; and that it would not necessarily be physically obvious to the mother that the girls had been cut.

66. The Local Authority's position that the Mother has been dishonest about the older girls being subjected to FGM has caused the family significant distress. I find that the Mother has acted honestly and transparently with professionals throughout.

Parents' making applications to discharge the order in 2016, possibly in 2018 and again in 2023.

67. In my judgment that cannot possibly be properly regarded as a risk factor. M was made subject to a draconian open-ended order with no mechanism for review. The reality is that the Local Authority were not continuing to work with the family, and the case was closed. They did not signpost the family to any educative work or support, did not undertake any further assessments, and did not undertake any process for regular review. The family therefore had no other option but to apply to the court and seek review of the order when M wished to travel abroad. Far from this being a risk factor, they acted entirely properly.

M wanting to travel to Saudi Arabia in April 2024 for a "religious celebration/festival".

68. There was no proper basis for the Local Authority to suggest there was anything about the proposed trip to undertake religious obligations in Saudi Arabia that created or increased a risk of FGM to M. It is entirely unclear how the social worker had formed this view. FGM is not a religious practice. The family have all been very clear as to their understanding on this issue.

69. The risk factors identified by the Local Authority do not withstand proper scrutiny.

70. Furthermore, what is deeply concerning about the Local Authority's risk assessment, is that it makes no attempt to engage with the crucial question of whether, in light of the extensive work undertaken with the family by FORWARD in 2014, and M's own increased age, insight, maturity and capacity to self-protect, the risk has changed.

71. The Court thus turns to the evidence of increased protective factors since the PSO was made.

72. First, as regards work undertaken by the family, the report from FORWARD details the work carried out with mother and M's older sisters over 7 sessions in 2014. The work commenced following self-referral by the Mother, having been sign-posted to FORWARD by her MP. The report details mother's excellent engagement, insight into and interest in the issues, her firm understanding as to the religious, cultural and legal status of FGM and her support for her

daughters in developing their understanding and insight. It is an entirely positive report in which mother is considered a protective factor for her daughters.

73. The Mother is indeed described by all professionals, including the Local Authority social worker, as showing insight and understanding into the harms of FGM. She has been consistent in expressing the view she is against FGM due to her own experiences. There is no evidence to support the contention that this is disguised compliance by the Mother maintained over many years.

74. The family are described as close, loving and mutually supportive. They speak openly and honestly about FGM. That is clearly a protective factor. There is no evidence of M being subjected to pressure and coercion by anyone.

75. The court observes that more generally there are no concerns at all regarding the parenting M has received. She is making excellent progress at school and planning for her future career.

76. M is now of such an age, that FGM would not be considered appropriate within Somali culture.

77. Furthermore, M is now a mature, knowledgeable and insightful young woman. She clearly understands FGM is not a religious practice. She is firmly opposed to it. She knows how to access help.

78. In the opinion of Ms Nur, there is thus no risk to M. The court can discern no proper basis to depart from that expert view.

79. Having undertaken an analysis of the risk of harm, the Court then needs to balance that risk against the detrimental impact of the PSO on M.

    - It is clear M experiences significant distress that she cannot travel, go abroad with family or friends, or undertake the usual day to day business that requires passport ID. In her words, she feels different and trapped. I am satisfied the PSO constitutes a significant interference with her Article 8 rights.
    - The order also prevents her from undertaking religious obligations abroad with her family as she would wish. The PSO constitutes a significant breach of her religious freedoms under Article 9.

80. Finally, no one doubts that M is a competent, mature, bright young woman. The PSO is significantly undermining her developing autonomy, freedom and ability to exercise her own decision-making capacities. That cannot be consistent with her best interests.

81. When the court weighs those competing considerations, it is clear that the PSO must be discharged. There is no evidence of ongoing risk of FGM to M, whilst the order continues to have a very profound impact on her competing rights and freedoms. Placed within the framework of the Children Act 1989, it is clearly in her best interests for the order to be discharged.

Lessons to be learnt from this case:

82. I am invited by Mr Kayani, counsel for the applicant mother, to set out some general observations about the manner in which orders protecting against the risks of FGM should be dealt with to avoid the issues which have arisen in this case.

83. Such applications should, in my judgment, be made under the Female Genital Mutilation Act 2003 which provides a framework and structure for decision-making. There are a number of helpful authorities providing authoritative guidance as to how that legislation should be interpreted and applied: see, for example, *Re X (A Child) (Female Genital Mutilation Protection Order) (Restrictions on Travel)* [2019] 1 FLR 415; *Re X (FGMPO) (No 2)* [2019] EWHC 1990 (Fam), and accompanying commentary in the *Family Court Practice*.

84. Care should be taken that orders are focused, targeted and proportionate to the specific risks established.

85. Indefinite orders are highly draconian and should only be made in the most exceptional of cases. Orders should ordinarily be time-limited or subject to a process of in-built review, in the same way as other highly interventionist protective orders made in the family courts. It cannot be left to individual family members, many of whom reside within marginalised communities, to bring matters back before the Court for review.

86. Whilst a protective order is in place, it remains incumbent on the local authority to continue to support the family, including facilitating direct work with the child as is appropriate to the child's age, to improve their understanding and insight into the risks and harms of FGM. The objective must be to reduce or remove the risk to obviate the need for the order remaining in place.

87. In undertaking assessments of risk whether within proceedings or outside of them, the local authority should at the earliest opportunity identify whether they require expert assistance and support from outside professionals or agencies. It is crucial assessments are made on a sound and properly informed understanding of FGM and the socio-cultural and familial context within which the continuing risk of FGM to women and girls exists. It is perhaps to be expected that hard-pressed local authorities will not have the necessary levels of knowledge and experience within their existing teams to carry out what can be complex and nuanced assessments.

88. Orders should be retained within Local Authority records whilst they remain in force.

Ms Justice Harris

16th October 2024