Re X [2019] EWHC 1990 (Fam)

Case summary coming soon

Neutral Citation Number: **[2019] EWHC 1990 (Fam)**
Case No: FD16F07013

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/07/2019

Before:

THE HONOURABLE MR JUSTICE COBB
- -

Re X (Female Genital Mutilation Protection Order. No.2)
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- -

Ms Hannah Markham QC and **Mr James Holmes** (instructed by **Hertfordshire County Council**) for the **Local Authority**
Mr Nkumbe Ekaney QC and **Dr. Charlotte Proudman** (instructed by **Duncan Lewis**) for the **mother**
Mr Christopher Hames QC and **Mr Alistair Perkins** (instructed by **Dawson Cornwell** solicitors) for the **father**
Miss Kate Tompkins (instructed by **Cafcass legal**) for the **Guardian for X**

Hearing dates: 25 March – 5 April, 22 & 23 May 2019.

Submission of final evidence: 2 July 2019
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Approved Judgment
I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.
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THE HONOURABLE MR JUSTICE COBB

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, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

The Honourable Mr Justice Cobb:

Introduction

1. This is an application brought under *section 5A* and *Schedule 2* of the *Female Genital Mutilation Act 2003* ("the 2003 Act") for a Female Genital Mutilation Protection Order ('FGMPO') in relation to a girl X, who is now aged nearly three years old. The application was made as long ago as 24 November 2016.

2. X is, by all accounts, a happy and thriving infant who is developing very well in the sole care of her English mother ("the mother"); the mother and X live in Hertfordshire. X's father ("the father") is an Egyptian national, and lives in Egypt. The mother converted to Islam in late 2013, and the parties married in May 2014. X's father is currently not permitted entry to this country to visit or live with the mother; I am satisfied that he would find it difficult to obtain a relevant visa in the near future. The mother wishes to take X to visit her father in Egypt.

3. The application before me was first heard by Russell J in 2017 (see her judgment at *Re X (A Child) (Female Genital Mutilation Protection Order) (Restrictions on Travel)* [2017] EWHC 2898 (Fam)). On an appeal initially by the mother (though during the appeal process, the mother abandoned her appeal, and the father was substituted as appellant), the Court of Appeal (***Re X (A Child)(FGMPO)*** **[2018] EWCA Civ 1825**) allowed the appeal in relation to the absolute worldwide "travel ban" which Russell J had imposed until X attained the age of 16.

4. While the Court of Appeal did not explicitly set aside Russell J's findings of fact, the Court of Appeal made clear that in order to re-evaluate the risks in the case, and specifically the appropriateness and/or proportionality of the travel ban, the judge to whom the case was remitted would need to form his or her own view of the risks on the evidence. As Moylan LJ observed at [7]:

> "… another judge dealing with the case would only be in a position properly to determine the terms of the FGMPO having heard the whole case and having made their own findings and their own assessment, in particular, of the parents".

And later at [57]:

> "It has to be a full rehearing because another judge could not be asked to determine one aspect of the case but at the same time be bound by the judge's findings. This would not be a fair way of determining the application. … the question of what additional terms to include within the order cannot be severed from the rest of the case. The determination of what order to make under the *2003 Act*, including as to what prohibitions and/or other terms, has to be determined at the same hearing".

As it happens, the shape of the evidence, and the arguments advanced by the parents, and to a lesser extent the Guardian and Local Authority, have changed in varying degrees since the hearing before Russell J. Expert evidence has been provided at this hearing by experts instructed since the earlier hearing and appeal. In light of the above, a re-evaluation of risk would have been essential in any event.

5. At no stage of this litigation, either before Russell J, the Court of Appeal or before me, has it been argued that the court could not impose the worldwide travel ban (if necessary for an extended period), as part of its powers associated with the making of a FGMPO under *Schedule 2, para.1(2)/(3)/(4)* of the *2003 Act*. The question is, and has been, whether it should do so.

6. This is a detailed judgment. I thought it helpful to identify at the outset five key messages from within the text below, as follows:

> i) There is no dispute that FGM is a barbaric and criminal act; this point needs no amplification but may benefit from repetition. Although the World Health Organisation categorise FGM into four main types (each describing the specific cutting performed, summarised as I. Clitoridectomy, II. Excision, III. Infibulation and IV. Other), it is important that *no one type of FGM should be regarded as less objectionable or heinous than another* (see [14]-[16] and [52] below). FGM in whatever form is torturous within the context of *Article 3 ECHR*, and is "cruel, discriminatory and degrading" (see [27] below);
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> ii) In this situation, and in many like it, the rights to respect for private and family life (*Article 8 ECHR*) and the right to protection from torture (*Article 3*) are engaged; any interference with the Article 8 rights has to be necessary and proportionate, having regard to the harm to be protected against (see [27]-[29] below);
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> iii) In a re-hearing involving a factual dispute, the trial judge invariably faces the special difficulty of assessing evidence which has been previously rehearsed, tested and critiqued. This is a particular challenge in a case, such as this, when the case for the applicant Local Authority turns largely on what the protagonists have previously *said*, or are reported to have *said*, or apparently *believed*, and/or *say now* about the key issues (see [31]-[32] below);
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> iv) When considering whether (and if so to what extent) to impose orders under *Schedule 2* of the *2003 Act* to support a FGMPO, it is helpful to assess the risks to the child by reference to the contextual 'macro' factors which are relevant to the likelihood of genital cutting (i.e. the prevalence of FGM in the country, the societal expectation of FGM, the effectiveness of local law enforcement agencies etc.) together with the associated safeguards, and the individual 'micro' factors and safeguards pertaining to the particular case and to the subject child(ren) and family (see [91] below);
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> v) Risk assessment in this context, as in other contexts in family law, should be an ongoing process. Risk is generally dynamic, not static; the barometer of risk is often relatively sensitive. Courts should be alert to the possibility that as or when new evidence emerges, and/or the contextual or individual characteristics of a given

situation shift, so the index of risk may well shift (see [106] below).

The hearing, and the position of the parties

7. I heard the relevant oral evidence over eight court days; I heard from health visitor (KA), Detective Sergeant Condor, social workers Mary Oni and Tsitsi Masanga; I heard from Ms Angela Sabin-Quarm social worker from the National Female Genital Mutilation Centre, Professor Tasmin Bradley (University of Portsmouth), the mother, the maternal grandfather and the Children's Guardian, Ms Lilian Odze. I heard evidence by video-link from Egypt from the father, the paternal grandparents, and Dr. Amel Fahmy. The oral evidence was taken at a pace which allowed for the simultaneous translation of all that was said for the father who appeared by video-link throughout from Egypt. During the hearing, in response to specific directions, I received written representations from the Forced Marriage Protection Unit, among others.

8. At the conclusion of the evidence, and at the request of the parties, I adjourned the hearing to allow the parties to take further instructions on proposed detailed safeguards in the event that I was minded to permit a trip or trips to Egypt. It was acknowledged at the Bar that further detailed thought needed to be given to the precise terms on which any visit to Egypt could safely be undertaken. Central to that exercise, and for reasons which will become clear (see particularly [118] below), it was necessary to engage the maternal grandfather fully in those discussions. The application was re-listed for further evidence and final submissions. Even after the final submissions were concluded, further evidence was sought and obtained (filed on 2 July 2019).

9. By the conclusion of the submissions at the adjourned hearing, the position of the parties was (and is) as set out in the paragraphs which follow.

10. As at all previous relevant hearings, neither parent contests the making of a FGMPO, which prohibits any party from arranging for the circumcision or cutting of X. Materially, they do not actively oppose the continuation of a worldwide travel ban on an interim basis, but would wish it to be relaxed to allow for one one-week trip to Egypt in September 2019; they propose that there should be a court review of the arrangements for any further travel thereafter. Mr Ekaney QC and Dr. Proudman for the mother submitted that this proposal would most closely achieve proper observance of X's and the mother's *Article 8* rights, while protecting X's *Article 3* rights. Mr Ekaney significantly concedes that as X grows older, so the risk that she will be subject to FGM in Egypt becomes greater. Thus, he accepts, what may now be appropriate (in relation to travel and/or safeguards) may not be so when she is, for instance, 9 years old. In those circumstances, the mother's lawyers advocate that there be *one* visit permitted now, and for the court to reassess the matter once everyone has an objective experience of how this can be achieved.

11. Mr Hames QC and Mr Perkins for the father took a broadly similar line, acknowledging that the father would be content for an interim worldwide travel ban to be maintained, on the basis that there can be one trip this year; they submit that this will helpfully provide a framework for future trips.

12. The Children's Guardian, Ms Lillian Odze, had supported the absolute worldwide travel ban in the proceedings before Russell J in 2017 and in the proceedings before the Court of Appeal. In her written report, filed in advance of this hearing, she maintained that position. Her main concern was that the mother and X would be prevented from leaving Egypt at the end of any stay. Having heard the evidence given before me, and shortly before she gave her oral evidence Ms Odze signalled that she had changed her view, and recommended that X be permitted to travel to Egypt on two or more occasions each year, subject to satisfactory safeguards being in place for the trip. After the adjournment (see [8] above), Ms Odze revised her view again; she was less than assured that the safeguards proposed by the parents were 'satisfactorily' evidenced. She recommended a further adjournment to allow for more information to be obtained about the arrangements for travel to Egypt, alternatively a decision 'in principle' subject to further detail being provided.

13. At the conclusion of the substantive hearing, and responding to Ms Odze's evidence, the Local Authority indicated that it still regarded the risk to X of a trip to Egypt as 'high', but indicated that it would not actively oppose the relaxation of the travel ban to provide for one carefully orchestrated trip, provided that I considered the risks to be manageable.

Female Genital Mutilation

14. Female Genital Mutilation ('FGM') or Female Genital Cutting is a practice widely carried out mainly among specific ethnic populations in Africa and parts of the Middle East and Asia. FGM is a generic term for a range of procedures which involve the partial or total removal of the external female genitalia for non-medical reasons; it serves as a complex form of social control of women's sexual and reproductive rights. In 1997, the World Health Organisation ('WHO') together with the United Nations Children's Fund and the United Nations Population Fund jointly classified FGM into four types; see the identification and discussion of these types in domestic caselaw (see Sir James Munby P in ***Re B & G (No.2)*** **[2015] EWFC 3** at [7] [1]).

15. I identify the categories of FGM below, drawing from the Government's Multi-Agency Statutory Guidance on Female Genital Mutilation issued in April 2016 (updated October 2018) which cites the WHO's most recent categorisation. I do so to set a context for my discussion of the evidence:

> Type 1 – Clitoridectomy: partial or total removal of the clitoris (a small, sensitive and erectile part of the female genitals) and, in very rare cases, only the prepuce (the fold of skin surrounding the clitoris); this type is subdivided into type 1a: removal of the clitoral hood or prepuce only, and type 1b, removal of the clitoris with the prepuce;

> Type 2 – Excision: partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora (the labia are the 'lips' that surround the vagina); when it is important to distinguish between the major variations that have been documented, the WHO propose three subdivisions: type 2a, removal of the labia minora only, type 2b partial or total removal of the clitoris and the labia minora, and type 2c, partial or total removal of the clitoris, the labia minora and the labia majora;
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> Type 3 – Infibulation: narrowing of the vaginal opening through the creation of a covering seal. The seal is formed by cutting and repositioning the inner, or outer, labia, with or without removal of the clitoris; type 3a describes the removal and apposition of the labia minora, and type 3b describes the removal and apposition of the labia majora; and
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> Type 4 – Other: all other harmful procedures to the female genitalia for non-medical purposes, e.g. pricking, piercing, incising, scraping and cauterising the genital area.

16. This categorisation comes with an important cautionary note. Professor Bradley (see [76] below *et seq*.) rightly warned that a serious danger of classification is that one type of FGM may be seen as 'less bad' than another; she told me that in some respects labelling the mutilation in this way "is not helpful. It might appear that some cutting is not as harmful as others. That understanding needs to be dispelled. All of what is described above is abusive, harmful and serious ill-treatment. … Type 1 is not 'lighter' than the others". This advice was material in the instant case: in a conversation in her college in December 2018 the mother wrongly referred to Type 1 as "not the worst level" (see [52] below).

17. While the practice of FGM is heinous and abhorrent, and its practice impossible to justify, it is important to understand how and why its practice is supported in Egypt as in other parts of the world. The justifications and motivations are generally based on a belief that FGM brings status and respect to the girl, it preserves a girl's virginity/chastity, it is said to be part of being a woman, it is a rite of passage, it gives a girl social acceptance, especially for marriage, it upholds the family "honour", it cleanses and purifies the girl. Some who support the practice have sought to eliminate risks of infection (by, for example, carrying out the procedure in a medical environment) and this gives the appearance of legitimising FGM. The experts commissioned in this case (see below) have advised me that FGM signifies a woman's subservience and obedience to men. Although large numbers of the Egyptian population apparently believe that FGM is a religious requirement within the Hadith, there is no religious imperative or expectation – either in the Christian or Islamic faith.

18. These are not, of course, justifications at all. FGM is a crime and its practice is utterly objectionable. There are multiple serious harmful consequences of FGM for the young female, which, in the short-term, can include severe pain, shock, haemorrhage, wound infections, urinary retention, injury to adjacent tissues, genital swelling, and/or death [2]. Among the longer-term consequences are genital scarring, genital cysts and keloid scar formation, recurrent urinary tract infections and difficulties in passing urine, possible increased risk of blood infections such as hepatitis B and HIV, pain during sex, lack of pleasurable sensation and impaired sexual function, psychological concerns such as anxiety, flashbacks and post-traumatic stress disorder, difficulties with menstruation, complications in pregnancy or childbirth, and/or increased risk of stillbirth and death of child during or just after birth [3]. It is obvious in this case (note what is said below about the paternal grandmother), as in others, that devastating and long-term psychological and physical effects of the procedure endure.

19. It is, I repeat, an abhorrent practice, and unquestionably a serious form of abuse on girls and young women. There can be no doubt, as Sir James Munby P made clear in *Re B & G (No.2)* at [68] that "any form of FGM constitutes "significant harm" within the meaning of section 31 and *section 100* of the *Children Act 1989*. He added: "[t]he fact that it may be a 'cultural' practice does not make FGM reasonable; indeed, the proposition is specifically negatived by *section 1(5)* of the *2003 Act*"; this provides that in considering whether an offence has been committed "it is immaterial whether she or any other person believes that the operation is required as a matter of custom or ritual".

The law

20. *Section 5A* and *Schedule 2 (Part 1)* of the *2003 Act* contain the legislative powers for the civil injunctive order under consideration in this case. Such orders are made (*Schedule 2 para.1(1)*) "for the purposes of – (a) protecting a girl against the commission of a genital mutilation offence". *Schedule 2 para.1(2)* materially provides that:

> "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."

Schedule 2 para.1(3) provides that an 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."

The terms of the order may extend to conduct outside of England and Wales (as well as (or instead of) conduct within England and Wales) (see *para.1(4) Schedule 2*, of the *2003 Act*). The *2003 Act* specifically preserves the right for the court to use any of its other powers to protect a girl in these circumstances, including the inherent jurisdiction (*Schedule 2, para.16*).

21. There is no fixed period of time for which a court can make the order (see *para.1(6) schedule 2* of the *2003 Act*).

22. The Local Authority is a relevant 'third party' under the *Schedule 2, para.2(2)(b)/(7)* of the *2003 Act* and is therefore entitled to bring this application.

23. The burden of proving the facts relevant to support the application lies squarely on the Local Authority. Where I make findings within the narrative below, I do so by reference to the ordinary civil standard of proof, and having specific regard to the comments of Lord Hoffman in ***Re B (Care Proceedings: Standard of Proof)*** **[2008] UKHL 35** at para [2] [4]. The Local Authority must also demonstrate both the necessity and the proportionality of the range of protective orders sought in this case, specifically the worldwide travel ban. It is *not* for the parents to prove that X is not at risk of FGM, nor is it for them to prove that it is safe for X to travel, nor that any risk can be mitigated.

24. A useful starting point for my review of the law is the judgment of the Court of Appeal in the instant case ([**2018] EWCA Civ 1825** at [23]-[34]). I do not intend to reproduce those paragraphs here. The statutory discretion afforded to the court when considering whether to make an order (see [20] above) is widely drawn. Moylan LJ observed that the "very broad" powers in *Schedule 2 para.1(2)* of the *2003 Act* provide no real guidance "as to the approach the court should take when determining whether and, if so, in what manner to exercise its powers" ([2018] EWCA Civ 1825 at [24]).

25. Breach of the civil injunctive order ("[a] person who without reasonable excuse does anything that the person is prohibited from doing by an FGM protection order") is punishable as an offence (*Schedule 2, para.4*) and the guilty party faces a maximum of 5 years custody if tried on indictment. Much wider sentencing powers are available for those prosecuted for an offence under **Sections 1, 2** or *3* of the *2003 Act*.

26. On 15 March 2019, during the course of this hearing, the *Children Act 1989 (Amendment) (Female Genital Mutilation) Act 2019* came into force; this has the effect of including civil/family proceedings for a FGMPO within the definition of 'family proceedings' in *section 8(4) CA 1989*. It enables care proceedings to be brought within the same application as an application for a FGMPO. Care proceedings have not been seriously contemplated in the instant case.

27. The practice of FGM is "an abuse of human rights" (see *Re B and G (Children)(No 2)* [2015] 1 FLR 905 at [55]); it is well-recognised that FGM violates *Article 3* of the *ECHR*, which serves to protect persons from "torture or … inhuman or degrading treatment or punishment". As Baroness Hale observed in *Fornah v Secretary of State for the Home Department* [2006] UKHL 46; [2007] 1 AC 412, at [94]:

> "… the procedure will almost inevitably amount either to torture or to other cruel, inhuman or degrading treatment within the meaning, not only of article 3 of the European Convention on Human Rights, but also of article 1 or 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, article 7 of the International Covenant on Civil and Political Rights, and article 37(a) of the Convention on the Rights of the Child".

And Lord Bingham in the same case said this at [8]:

> "FGM has been condemned as cruel, discriminatory and degrading by a long series of international instruments, declarations, resolutions, pronouncements and recommendations. … Therefore those cultural practices that involve "severe pain and suffering" for the woman or the girl child, those that do not respect the physical integrity of the female body, must receive maximum international scrutiny and agitation. It is imperative that practices such as female genital mutilation, honour killings, Sati or any other form of cultural practice that brutalizes the female body receive international attention, and international leverage should be used to ensure that these practices are curtailed and eliminated as quickly as possible".

28. When confronted with a case of suspected or threatened FGM, the court has an obligation "to take measures within the scope of [the court's] powers which, judged reasonably, might have been expected to avoid the risk" of FGM where that risk is "real and immediate" (see by analogy *Osman v United Kingdom* (1998) 29 EHRR 245, and *E v Chief Constable of the Royal Ulster Constabulary and another* [2009] 1 AC 536). *In E v United Kingdom* (2003) 36 EHRR 519 it was said that:

> "A failure to take reasonably available measures which could have had a real prospect of altering the outcome or mitigating the harm is sufficient to engage the responsibility of the state" (para.99).

29. In this case, as in many like it, *Article 8 ECHR* is actively engaged as X and her parents have a right (albeit qualified) to respect for their family life. In balancing the *Article 3* and *Article 8* rights of X, I must be careful to ensure that "the interference with [X's] *Article 8* rights, and those of her … family… [are]… limited to that which is necessary to protect her *Article 3* rights" per Hayden J in ***A Local Authority v M & N*** **[2018] EWHC 870 (Fam)**, [2018] 4 WLR 98. endorsed by Moylan LJ in his judgment in this case at [30].

30. As to the arrangements for assessing and processing risk, Moylan LJ in the appeal hearing in the instant case offered the following observations at [2018] EWCA Civ 1825 at [31-32]:

> "[31] The court will have to consider the degree of the risk of FGM (which, I would suggest, needs to be at least a real risk); the quality of available protective factors (which could include a broad range of matters including the court's assessment of the parents); and the nature and extent of the interference with family life which any proposed order would cause.
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> [32] The need for specific analysis balancing these and other relevant factors extends to any additional prohibitions or other terms the judge may be considering including in the FGMPO. This is because each term included within the FGMPO must be separately justified. In this exercise, although the nature of the harm would, self-evidently, be a breach of Article 3, it is the court's assessment of the degree or level of the risk which is central to the issue of proportionality and to the question of whether a less intrusive measure, which nevertheless does not unacceptably

compromise the objective of protecting the child, might be the proportionate answer".

On the issue of risk, see also my later reference to *Re K* [1999] (Thorpe LJ) and *Re R* [2013] (Rimer LJ) at [110] below.

The re-hearing

31. The background facts are rehearsed in the section of the judgment which follows this. My ability to reach confident conclusions about certain aspects of the past history has been far from straightforward for a number of reasons:

i) Some of the key conversations and events which are crucial to my determination took place more than two years ago; inevitably memories have faded;

ii) Much focus has been brought to the specific content of conversations, and things said by the parents and others. Common experience confirms how notoriously difficult it is to recall the detailed content of conversation (especially the precise words used) even immediately after the event, let alone months or years later;

iii) The parties and witnesses have given evidence on the central issues at a previous hearing (before Russell J) in 2017; their evidence has been critiqued by Russell J in her judgment, and they have had the chance to review those comments. The parties have been further and separately questioned on the key issues and events by social workers and others outside of the court arena. Their recollections of things said, and of events, are bound to have been affected, and probably distorted, by this level of repeat questioning on the same material;

iv) It is entirely natural that the lay parties and other family members will have sought to present themselves in the most favourable light; they may well have been cautious about making admissions which they sensed to be against their interests;

v) It is possible that the parties and their families have deliberately lied in order to hide their true feelings or intentions; even if they have lied on some issues, I have been conscious not to assume that they have lied or been untrustworthy on all matters (applying *R v Lucas* [1981] QB 720);

vi) The native language of the father and the paternal grandparents is Arabic not English. It is possible that miscommunications, misunderstandings and/or misrepresentations may have occurred simply through errors of translation or understanding, particularly where conversations have taken place outside of the courtroom without the assistance of interpreters. It is of course possible that – in spite of the excellent services of Mr. Mohamed Abu El Khir, the court appointed interpreter (see PostScript at [132]) below) – miscommunications have occurred even in the court setting. It is inevitable that some nuance is lost.

32. Furthermore, I am acutely conscious of the sensitivities, across cultural, gender, and generational lines which will be generated by discussion of female genital mutilation or circumcision. Dr. Fahmy who gave evidence before me (but not in the previous hearing) (see more generally below [76] *et seq*) was clear that the issue of female circumcision would simply not have been discussed across generations and genders in a traditional Egyptian home (particularly where the family live a rural life, in a rural community); therefore lack of awareness of the issue generally (particularly among the younger males in the family – such as the father in this case), or its occurrence within a family may not be as well-known as might be expected. The paternal grandmother told me that "FGM has not been an issue or a topic of discussion in our family unit until very recently when these proceedings were issued relating to [X]". The father, separately, put it, compellingly, thus:

"A subject such as FGM is not usually discussed between a mother and son; it would be viewed as culturally inappropriate. I was grateful to my mother for the fact that she was willing to speak to me about it, but it was difficult for my mother to speak to me".

He added, with considerable understatement:

"I can imagine in any culture it would be difficult for a mother to talk to her son about such pain and agony and the process of her genitals being mutilated".

33. I have had to recall more than once in this hearing what Leggatt J (as he then was) said in the case of *Gestmin SGPS SA v (1) Credit Suisse (UK) Ltd (2) Credit Suisse Securities (Europe) Ltd.* [2013] EWHC 3560 (Comm); he warned against the:

"… common (and related) errors" in supposing "… (1) that the stronger and more vivid is our feeling or experience of recollection, the more likely the recollection is to be accurate; and (2) that the more confident another person is in their recollection, the more likely their recollection is to be accurate." [16];

Leggatt J described this phenomenon more fully in his judgment, adding:

"[18] Memory is especially unreliable when it comes to recalling past beliefs. Our memories of past beliefs are revised to make them more consistent with our present beliefs. Studies have also shown that memory is particularly vulnerable to interference and alteration when a person is presented with new information or suggestions about an event in circumstances where his or her memory of it is already weak due to the passage of time."

The facts

34. The subject of the proceedings is X. On all of the evidence, I am able with confidence to conclude that she is a bright, engaging, infant, who is developing well and is closely

attached to her mother. She attends nursery two days per week. The mother is universally regarded as an 'exemplary parent' to X, and (per Ms Masanga, the social worker) there is observed to be "a good bond" between them. It is obvious that X is at the centre of her wider family's life and is doted on by her relatives. She is the only grandchild on the maternal side. Her maternal great-grandmother (the mother's grandmother) is a regular visitor to the mother's home (two or three times per week) and has a close relationship with X. X sees her father regularly by Skype but has not yet had any physical contact with him.

35. The circumstances in which this application comes before the court are set out extensively by Russell LJ in her judgment (see [3]-[42] *op. cit*.) and are summarised by Moylan LJ at [9]-[11] of the judgment of the Court of Appeal [2018] EWCA Civ 1825, thus:

> "[9] The mother is British. The father is Egyptian. They met in Egypt where they were both working in the tourism industry in hotels. They married in Egypt on 25th May 2014. On the evidence before the judge she was "not aware of the kind of marriage contracted" by the parents. We gave permission to the father to adduce further evidence comprising a copy of and a translation of the marriage certificate. These show that the marriage was: "Solemnized in Cairo by (a named official) in his capacity as a registrar of Cairo registry office".
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> [10] The parents lived together in Egypt until January 2016 when the mother travelled to England. She then discovered that she was pregnant and decided to remain in England to give birth. As set out in the judgment, following X's birth in England the mother raised the issue of FGM with a health visitor. The mother was intending to return to Egypt with X and, it would appear, wanted to discuss concerns she had about FGM. This led to the involvement of social services and the police and, about two weeks later, to an application for and an order under the 2003 Act. This prevented the mother from leaving England with X.
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> [11] In some respects not surprisingly, given how matters developed, the mother's plans for the future have fluctuated. It is not necessary for me to explore this issue further save to record that Ms Forster told us during the hearing that the mother wants to be reunited with the father and wants X to have a proper relationship with him".

36. It is necessary for me to colour in some of that outline in order fully to understand the issues and the outcome.

37. The father is the oldest of five children; he has two sisters and two brothers. He is a university graduate. One of his sisters is 27 years old and married, living with her husband in an apartment proximate to the family home; she has a daughter and a son. The father's other sister is now aged 15 and lives at home with her parents (the paternal grandparents of X). The paternal grandfather is retired; he formerly worked at the local university. I do not believe that the paternal grandmother worked outside of the home. The father's family live in a rural governorate in Egypt, whereas the father lives mainly, and has until recently worked, in Hurghada on the Red Sea coast. The mother asserts (there is no evidence to support this, or contradict it) that Hurghada has a reasonably-sized British expatriate community.

38. At the paternal family home, on the evidence I have heard, I find that life follows a broadly well-established tradition, where conservative gendered views prevail with greater segregation of the women and the men. This is the picture painted by the expert (Dr. Fahmy) who has assessed the family in Egypt, and accords with the mother's separate account of her own experience to Ms Sabin-Quarm. The paternal grandmother underwent FGM as a young person (when she was "ten or eleven"). Significantly, she reports having been traumatised by it; she spoke in her evidence of "the horror that I went through".

39. The mother was raised in England. For a period of time in her early 20s she worked in Egypt (for altogether about three years) in a hotel and in a school for children with special needs. She told me that she converted to Islam when she returned to the UK in 2013; she said that she did so of her own choice, not under pressure from the father. Dr. Fahmy was less sure of the mother's free-will in this regard and speculated that the father had sought to influence the mother by sending her YouTube videos and Website discussions about Islam. Dr. Fahmy understood that it was in in this way, that (according to the father) "she was convinced" to wear the veil. In 2018, the mother commenced a college course to study to be a teacher; she had to suspend her studies in December as her funding was withdrawn. She has now taken up paid employment and although disappointed not to be studying, she told me that she is in a better position to start to save to raise the funds necessary to sponsor the father's spousal visa, should that application be pursued.

40. As indicated in the extract from Moylan LJ's judgment above ([35]), the proceedings were initiated in 2016 following a referral from X's health visitor. The referral arose in this way. On 11 October 2016, at a routine home visit, the mother is reported to have discussed with her health visitor that she was planning to travel to Egypt with X from December 2016, for a period of 6 months (later reduced to 3 weeks). In the conversation, the mother is reported to have said that X's father and her family "are expecting" [X] to undergo FGM during her and her mother's planned visit to Egypt"; separately it is recorded that the paternal family had "assumed" that X would be circumcised (subjected to FGM). The mother had continued (according to the report): "[X]'s father …has said that he did not realise that it [FGM] was illegal in the UK and all of the females in his family have undergone the procedure." The mother reported that the father had allegedly told her that X "did not have to have it [circumcision] done". It was further reported that the father had apparently told the mother that he thought that FGM should be 'legalised' and undertaken in a hospital. The mother is reported to have said later that while she did not worry about her husband's attitude to FGM "she is worried about his family still wanting this procedure". On 18 November, at a further health visitor visit, the mother is reported to have said that the father "has assured her that her daughter will not undergo this

procedure". The mother had a general awareness of FGM from her own life in Egypt; she told me (though the father did not confirm this, he did not dispute the mother's account) that earlier in the relationship he had specifically asked her whether she had undergone the procedure herself. The health visitor told me, and I accept, that the mother was knowledgeable about FGM and had researched it. To her credit, the mother gave the health visitor the impression that she wanted professional help.

41. Inevitably, these revelations provoked a referral to social services who in turn made an application for and obtained a FGMPO (Keehan J) together with passport orders. Given the imminence of the mother's proposed trip to Egypt, a travel ban was also imposed. That interim position was maintained until May 2017 when Russell J commenced the first final hearing.

42. Much of the evidence in the case has focused on what the parents, and others, have gone on to say about FGM (specifically as it may pertain to X) in the days, weeks and months since the initial referral in 2016, in order to try and gauge their true views about the practice. Quite apart from the difficulties of recalling precise words used (see [31](ii) above), it has been difficult for the parents to clarify or revise their position on FGM and the risks to X, (particularly where such changes may be said to have indicated a retreat from the original statements), without attracting considerable suspicion, anxiety and, it may be said, criticism on the part of the professionals, who believe them to be minimising the risk, dissembling, or misleading.

43. I am satisfied that some statements of the mother and/or father (particularly in the early conversations) were probably made from a position of ignorance or naivety, and probably needed to be clarified. In that respect, I have been reluctant to draw an adverse conclusion against them for correcting their earlier comments. However, in other respects, I find that the parents *have* sought to row back from their original comments in order to divert or allay concern, and/or because they have become frustrated by the court process, and are keen to be reunited. An illustration of this is the report of a discussion between the mother and the social worker on 8 December, wherein the mother is reported to have said that it was *she* who assumed that FGM would be carried out (i.e. not the paternal family). In this regard, I accept that the mother had earlier accurately reported the father telling her that it was *his family* who would either "expect" or "assume" (I am unable to find which word was used, as both are reported to have been used) that X would be having this procedure during her visit in December 2016.

44. Viewing the evidence overall, I am satisfied that the mother has never been particularly worried that the *father* would wish the procedure to be carried out on X, but she was concerned about *his family's* view, and the extent to which the father would be influenced by his own mother and father and/or be impotent to interfere with their wishes. I note that she repeated these concerns (originally uttered to the health visitor) to DC Condor and Mary Oni when they interviewed her on 14th November 2016.

45. Initially, the mother indicated that the father had told her that *all* the females in his family had undergone the procedure. When the father was asked at the time about FGM in his family or community, he informed the professionals here that *no-one* in the family had been cut. He was clear about this. While the Local Authority alighted on this evidence as indicative of the father's unreliability, it is more likely in my judgment to be explicable by the fact that issues of female circumcision were not widely discussed across the generations or genders within the traditional family (per Dr. Fahmy), and that the father was making assumptions, little appreciating the significance of his statements. The father has nonetheless been consistent in asserting that X would not be cut. He disputed that he had suggested that X would be cut, or that FGM should be legalised and performed in hospitals.

46. I note that when the paternal grandfather was approached in the early stages of the investigation (29 November 2016) he remarked that FGM was "not a big issue", and denied that any female in the household had undergone the procedure. At that time, he must have known, of course, that his wife had indeed undergone the procedure, and bore the physical and deep emotional scars of the same. The position was clarified on the following day when the social worker spoke with the paternal grandmother; she was clear that while she had been circumcised, the younger generations had not.

47. Sometime in early 2017 the paternal grandfather apparently took his two daughters (but not granddaughter) to be medically checked by a medical practitioner, Dr Aynas Abdelsaam, in Egypt; apparently the intention was to provide incontrovertible evidence that they had not been subjected to FGM. The medical report (undated, and unsigned) confirmed that the father's sisters had not been subject to FGM. However, there is no detail in the report as to the qualifications or expertise of the doctor, the nature of the examination, the results of the individual examinations, the methodology or the findings on examination. The family's evidence is that the paternal grandfather organised this medical examination without the knowledge of his wife, the paternal grandmother. Much focus was brought upon this incident in the oral hearing and the evidence was not entirely satisfactory; this is one of those aspects of the evidence which (as I earlier indicated ([31](iii))) has been overly contaminated by repeat questioning. I note that in the previous hearing before Russell J, the father had said

> "I asked my dad to take my sisters to a doctor who is accredited and approved to obtain an evidence (sic.) … to prove that they did not undergo a female genital mutilation and I have asked my father not to let my brother-in-law know about it because this can cause an issue there."

The secrecy was explained when he was questioned on this issue before me, in an account which was broadly consistent:

> "When I spoke to the social worker and was told that it would be difficult to get a doctor from the British embassy, I told my dad he ought to make the move to have my sisters examined … At the beginning I did not want anyone to know about the problem I had… [Q: What problem?] The travel ban relating to my daughter… When my father took my sisters, I did not know that my father had not told my mother…".

When later cross-examined by Ms Tompkins for the Children's Guardian, he added:

> "I submitted the medical report [following the examination…]. [If the court is still unhappy], the court should make an order for another medical report; the social worker did not take the steps to examine my sisters … I told the social worker if you don't believe me you can have the girls examined yourself. … You can examine my sisters and cousins".

48. The grandmother told me that her husband "is the one in charge" and that he therefore made the decision to have the girls examined; while FGM is said to be a 'woman's issue in Egypt (and in this family), the paternal grandfather clarified that "in charge" meant "I was the one in charge to get the documents" for the court. The paternal grandmother told me that she did not enquire of the result of the examination; while this may be thought odd, it was consistent with her case that her daughters had not been cut, and the family had never made any arrangements for them to be so. Thus she would therefore know the outcome.

49. This clumsy attempt on the part of the family to prove a negative (i.e. that FGM has not taken place) in the end has proved nothing at all.

50. In late-July 2017, the paternal family met with representatives from the Egyptian Women's Legal Assistance (CEWLA) Foundation; together they discussed the issues around FGM. The very brief CEWLA report represented the extent of the 'expert' evidence before Russell J. The CEWLA workers were advised that the younger female members of the family had not been cut. The report contains the following:

> "[The paternal grandparents] also confirmed that they will not put any pressure on [the father] to circumcise his daughter. [The father] also confirmed to us that he never thought of practising FGM on his daughter or his sisters before …"

And concludes:

> "Based on the discussion with the family of [the father] CEWLA staff declares that the family is not concerned with FGM and that there is no history of FGM in their family. So we declare that [the father] will not practice FGM on his daughter and he will not be forced by his parents to do so in the future".

This was plainly not the most incisive of insights into the functioning or thinking of the paternal family.

51. It was largely on the basis of the evidence rehearsed above that the matter proceeded before Russell J. in 2017, towards her judgment which she delivered in November 2017. As earlier indicated, the mother (then the father) appealed Russell J's decision; the Court of Appeal delivered its decision on 31 July 2018, and case management directions were given by Sir James Munby P on 10 September 2018, by which he allocated the case to be heard by me.

52. In December 2018, the Local Authority social services department received a referral from the mother's college with the report that the mother had made a statement to a friend which had caused alarm. The mother explained it to me:

> "I said that it would have been better if we were allowed to go to Egypt in the first place because X is missing a lot and I do not think her family wants to do it anyway so the risk is small to me, it is not the worst level of FGM there is " (emphasis by underlining).

The referral form contains the report of the actual words said to have been uttered, namely "FGM would not have been as bad for [X] as all the court stuff" adding that Type 1 was the "lowest form of FGM". The mother told me in her evidence:

> "We had had court on Friday that week, this was the Tuesday or Wednesday… my mum learned that she was having to go to surgery, and I had had to out her into nursery … I had a couple of assignments, I learned that I had been withdrawn from the course, and that I owed money. I was very very stressed. [A friend] was asking about the court case. I lost it when she said that it was right to take [X]'s passport away. I lost it; I just wanted to let off steam….as a way to let off my stress. I have been kicking myself ever since. This is not how I truly feel. I wanted a confrontation; to show how much it has affected us. I worded everything the wrong way… I wanted to shock her, and argue with me".

53. Plainly and understandably this had and continues to have an impact on the Local Authority's thinking about the case. Of this referral, the social worker not unreasonably concluded: "I now have a mother who is not necessarily a protective factor. We now have a mother who says it is OK for her [X] to be cut".

54. Mr Ekaney asked me, in submissions, to consider whether these comments at the end of 2018 represented a *volte face* in her thinking on FGM or were merely indicative of pressures building on her (a "rant" at her friend for all the reasons the mother herself gave)? Prior to the 2018 referral, the mother had been consistent in expressing her opposition to FGM; since then, she has similarly consistently indicated her opposition. In my judgment, her consistent position is altogether a more reliable indicator of her true views, and I am therefore satisfied that her outburst does not show a fundamental change of attitude, nor that she harbours a lurking ambivalence about the unacceptability of FGM. However, it does tend to indicate that the mother (possibly like many others) may hold (or have held) the erroneous view that certain types of FGM are less unacceptable than others. The mother is, I accept, embarrassed and ashamed now by her comments, and recognises her stupidity. I am prepared to accept her comment: "it is so contrary to what I believe".

55. The social worker told me of a meeting on 28 February 2019 with the mother; the mother was asked to reflect on an earlier comment – namely that X would be in more danger now if she received her passport back. The mother doubted that she had ever

said this, but surmised that if she had said so "I may have been thinking that the family may be more secretive now because they know I am aware, and I oppose FGM". I find that this conversation did take place. It raises the index of concern about the mother as a protective influence.

The parents and wider family

56. The mother lives in England. She told me that she is "settled" here and does not wish to live in Egypt. She told me in her oral evidence, with conviction, that:

> "I am aware that if went [to live in Egypt] now I would get into a lot of trouble; I would have to exile myself. We have now got a nice flat here… it would hurt [X] to stay in Egypt. We have a big family here. The climate and the facilities for her are not suitable there. … It's not the life I want for her" (my note).

57. I acknowledge that the mother is a good parent to her daughter, with whom she is plainly closely attached; she told me, and I accept, that it has not been easy for her to be a single parent for the last three years, separated from a husband with whom she wishes to have a meaningful family life. The mother told me that she would do whatever it takes to protect X from undergoing FGM, and I believe that that indeed is her firm intention. I accept that she does not want her daughter to be circumcised or cut. Mr Ekaney submitted that her high level of care of X would be inconsistent with a mother who wanted to subject her child to FGM. On the *facts of this particular case* I believe that this submission is probably well made: X has thrived in her mother's care, and it is my assessment that it is inherently unlikely that the mother would wish to expose her child to harm in this way. As a *general* proposition, I cannot accept Mr. Ekaney's point, given the prevalence of FGM in many countries in the world.

58. However, worryingly, I found the mother to be somewhat dismissive of the Local Authority and Guardian's concerns about the risk to X, and some of her evidence on issues around the identification and management of risk was, I felt, somewhat superficial. She had not, perhaps, fully appreciated that the court would be as concerned as it is about the very serious risks of significant harm which she herself had raised. My reservations are established in part by the fact that she had not made as much effort as I had thought she would to address the obvious and predictable anxieties, particularly so given that this was a re-hearing and the mother was aware of the seriousness with which the English Court was treating the issues. To give some examples:

> i) She had referred to having friends in Egypt to whom she could turn for help and/or support if she travelled with X to Egypt, but told me that she had not in fact contacted them regularly, or indeed for some time;
>
> ii) She signed a recent witness statement (attesting formally to its truth) confirming that she had telephoned the police station in Hurghada to establish that the police could be easily contacted and available in case of emergency and had "satisfied" herself that the number was "operational"; it transpired on probing that she had not in fact made this call at all, and in fact the number was *not* operational;
>
> iii) Although she speaks some Arabic, she had not thought to study further Arabic or learn more of the language. The father speaks little English.

59. There was a lack of clarity and/or consistency in the evidence of the parents as to conversations between them, and between the father and the paternal family. Specifically, I was left unsure;

> i) Whether or not the father had ever said that cutting should be "legalised"?
>
> ii) Whether he had asked the mother whether she herself had been cut?
>
> iii) Whether the mother or father discussed his two sisters being examined?
>
> iv) What the father's sisters were told about the examination and why the paternal grandmother was not informed about the examination;
>
> v) About their future plans. Both parents confirmed that they wish to live in England together. The father told me "the life is much better there". Following the hearing, I noted that the order of 10 September 2018 recorded a recital to the effect that the parents "wish to live together with [X] in either England or <u>if that is not possible, Egypt</u>" (emphasis by underlining added). The parents were not specifically asked about his apparent change of stance (if that is what it is).

60. The mother's case now is that she would like to travel to Egypt with X for 1-2 weeks once or twice per year, until the father is able to join the mother living in England.

61. The father participated throughout the proceedings by video-link. He appeared to listen attentively to the evidence, and became distressed from time to time, and particularly when discussion turned to the difficulties he had experienced in achieving a meaningful relationship with X. He told me himself: "I wish I could take her into my arms, in order to hold her face to face. She is my daughter my flesh and blood".

62. I accept the submission that, in his own way and given the limited experience of her, he "loves" X, and he has been consistent in maintaining that he does not want X to be cut. The father told me, as he had told Dr. Fahmy, that he is opposed to FGM and that he does not want harm to come to X; I accept his evidence on this. I am unable to accept with the same confidence that this view is shared across his family (Dr. Fahmy told me that the wider family do not see FGM as a societal crime or violence against women, although they profess to have stopped practising it: see [79] below). He accepted that his wife was right to raise her concern about FGM with the health visitor ("of course… [X] comes first… [X]'s safety is our priority"), even though he had expressed his frustrations at the consequent court process. The father told me that he had reached out to local NGOs

in Egypt to learn more about FGM; while this may have shown willing to demonstrate his opposition to the practice, it was, in truth, a rather superficial exercise. He did not, for example, engage in any support group or initiate any activity which advocates against FGM. On 21 March 2019, the father signed a formal statement (attested to by a lawyer) confirming that he did not oppose X's worldwide travel; this was a response to the expressed concern that he would seek to stop X from leaving Egypt should she travel there.

63. The father has further deposed to the fact that "we are a modern Muslim family and we reject cultural customs which are harmful to women." My assessment is that the younger generations of the father's family probably are relatively 'modern', whereas the older generation has been exposed to more modern thinking and behaviours (the father's marriage to the mother, for instance), without creating permanent or irreconcilable division; indeed (as Dr. Fahmy observed) they may have become a little 'enlightened' about the subject of FGM (see [79] below). The father's wish is to reside in England with the mother and X; he has made clear that he wishes X to benefit from an English way of life and education, while being able to travel the world.

64. Assessment of the father, and of his credibility, was rendered more than usually difficult as his evidence was given via an imperfect (albeit adequate) video-link line, and through an interpreter based in court in London. As to the substance of his evidence, there were internal and other inconsistencies which are of course of concern (see [59] above); these do not however affect my assessment of him as a man who is genuinely opposed to the abuse of his daughter by genital mutilation. Mr Hames, sensing judicial anxieties about the father's reliability (particularly given Russell J's findings) submitted that generally it is the women in the household who are the decision-makers on matters of circumcision and the like, and not the fathers. This, argues Mr. Hames, offers material protection to X given the strong views *against* FGM expressed by the mother and the paternal grandmother.

65. It is apparent (from legal advice prepared by specialist immigration counsel dated 15 July 2018) that the father's prospects of entering this country had been materially disadvantaged by him having previously applied for the *wrong* type of visa (i.e. an EEA Family Permit Visa), and evidencing it wholly inadequately. It is suggested that he may be able to make an application now for the right type of visitor's visa to travel to this country (properly evidenced, including evidence of financial support while here), or for spousal visa or a Human Rights Application Outside of the Rules. It is said that his prospects of a visitor visa would be "excellent" if properly prepared and evidenced. At present the mother does not have sufficient funds to be able to sponsor a spousal visa; it is unlikely that she will be in a position to support such an application for some time. The father may be able in due course to satisfy the minimum income requirement through other means such as (maternal) family support and/or a firm offer of employment. This is not currently available. The upshot of the immigration advice is that a short visit for the father to the UK may be possible, but an extended visit to enjoy family life with his wife and daughter is somewhat more remote. He hopes that this will change.

66. The father has a male cousin who lives in Italy and is married with daughters. The cousin has submitted a statement of evidence, to which I can attach some but limited weight. He confirms that he has visited the extended paternal family in Egypt on a number of occasions with his two daughters. Neither child has been subjected to FGM on their visits to Egypt, "nor was the issue mentioned".

67. The maternal grandfather became an important character at this hearing. While he had previously tentatively offered (in the earlier hearing) to accompany his daughter and granddaughter on a visit to Egypt, this was advanced as a much firmer proposal before me. The parents' case was that he would fulfil the role of protective 'guardian' for X in the event that I permitted her to make a trip to Egypt. The maternal grandfather is a skilled man, working in schools, and is DBS checked. He has three teenage children still living with him (two are his own children, one is a stepdaughter). He gave his evidence carefully, and in a measured and frank way, and I felt was doing his very best to assist the court. Currently, he sees his granddaughter, X, two or three times per week, either at his own home or at the mother's home. The social worker described the maternal grandfather in her evidence thus:

> "I had an opportunity to meet with the maternal grandfather. We met at short notice. We spoke about his understanding of FGM; he showed a good understanding of what it is and its impact on girls and women, and I also spoke to him about whether he thinks it is safe for X to go to Egypt. His view was if he travels with the mother and X, X would be safe. There would be no risk of X undergoing FGM. He reassured that he trusted [the father] and he had met with him, he felt that he was a responsible young man. I asked maternal grandfather whether he can understand the local language which would be a barrier. He said that he did not understand the language. The maternal grandfather attended with [his wife]. She was very supportive in the meeting and she talked about X and she also said that should the need arise she would accompany them, and/or can play a part in the safety measures".

The social worker went on to describe the maternal grandfather as naïve in believing that he could offer protection to X in a country (Egypt) which he had only visited once, where he did not know the language, and where he would have only limited insight into the 'underground' world of FGM. While accepting the validity of these concerns, and to some extent sharing these concerns myself, I for my part did not weigh them as heavily against the maternal grandfather as the social worker had done.

68. The maternal grandfather told me that he would be able to accompany the mother and X to Egypt once per year for two weeks, or twice per year for one week each; he believes that he would be able to fund his own travel and make a contribution to the cost of accommodation. He added: "there is no limit to how far I will go to protect [X]", which I accept as his sincere expression of intent. He told me that he had educated himself about FGM, and its barbaric practices. I am satisfied that the maternal grandfather and his daughter (the mother) have a sufficiently close relationship that she would not jeopardise

by acting in such a way as to put him in the position of breaching his undertakings; this is an inherently powerful safeguard on these facts.

69. The paternal grandparents gave evidence from Cairo, by video-link. It was not always easy to follow the evidence of the paternal grandmother; she did not clearly answer the questions posed of her. This may be attributable to the language difficulties, the stress of the process and/or her intellect. She is not a sophisticated woman; the father told me that she had had no education beyond primary school. Her evidence was somewhat histrionic. She was voluble, easily agitated, and forceful in her answers. The mother describes her mother-in-law (the paternal grandmother) as someone whose "opinion is important in the family", and I could imagine that to be the case.

70. The paternal grandfather was also passionate and emotional when giving his evidence. Specifically, I was concerned about the paternal grandfather's lack of coherence in his account of taking his daughters (the father's sisters) for a medical examination without the knowledge of his wife, or his son-in-law.

71. Dr. Fahmy (see below) had had the opportunity of discussing the issues arising here with the paternal grandparents in their own language and in their own home. This provided, frankly, a more valuable collection of answers. Her report contains the following important information about them:

> i) The paternal family have low levels of education; they live in a village in an essentially rural governorate.
>
> ii) The paternal family was very aware that FGM is forbidden in the UK; they were aware that it was outlawed in Egypt but were not familiar with any detail;
>
> iii) The family were largely ignorant as to what is involved in FGM and the different types of cutting; they were "vague" about the impact of FGM on a woman and on a woman's sexuality;
>
> iv) The family expressed some surprise at the commonness of FGM among women in Egypt and did not believe that it had been performed on any of their friends or relatives; they were unable to cite any FGM messages; the family provided a mixed range of answers to questions around the religious significance of FGM;
>
> v) The paternal grandfather saw FGM as a "women's issue"; the paternal grandmother was anxious that her own daughters should not be required to experience the pain and suffering she endured through FGM; "some studies have shown that painful experience of FGM prevents mothers from cutting their daughters";
>
> vi) The family denied that they had discussed FGM generally within the household; this was felt by Dr. Fahmy to be unlikely, particularly given the very high incidence of FGM among women in their governorate (96%). Dr. Fahmy realistically opined that this denial was in all probability attributable to the family's concern that if they admitted knowledge and/or awareness of the practice locally this may jeopardise their position with this court;
>
> vii) The family demonstrated commitment to the protection of X.

The Local Authority

72. Miss Markham QC and Mr Holmes submit that while the Local Authority wants X to have a relationship with her father, at present the risks of allowing her to travel to Egypt to see him are too high. The social worker told me more than once that she had found this a "very difficult" situation, and finely balanced. The Local Authority maintains that the proposed 'safety plan' advanced by the parents is not sufficiently clear and cogent, especially given the maternal grandfather's low level of understanding of what would be required of him in Egypt. It believes that it is too risky to contemplate a trip for X to Egypt. The Local Authority maintains that if there were to be any breaches of the safety plan, X would be exposed to unacceptable and immediate risk.

73. The Local Authority's concern is rooted in the inconsistencies in the accounts given by the mother and father to social workers and professionals about FGM, and its incidence in the paternal family. This lack of clarity demonstrates a lack of appreciation of, or concern about, the seriousness of FGM, and the risks to X by a trip to Egypt. Miss Markham asks me to accept (as I do) the accuracy of the note of the health visitor, the police officer and the social worker. As earlier explained, I suspect that some of the early comments were made naively and/or from a position of ignorance – the mother reporting some of what the father had said which may, or may not, have been accurately interpreted or understood.

74. The Local Authority recognise that the decision of whether X can travel to Egypt will be likely turn on whether I can trust the protagonists; it is said that the court must take a view about how open and honest they have been. Miss Markham questions the reliability of the parents, drawing specific attention to the assertion in the mother's most recent statement about contacting the police station in Hurghada which, on probing, was found not to be true (see [58](ii)). Further, while not doubting the maternal grandfather's integrity, the Local Authority raises significant question about his naivety in the role he is to perform, and the consequent risks which are likely to arise for X. The Local Authority point out that he has not done any separate fact-finding, or independent researches. Miss Markham does not doubt that the maternal grandfather *intends* to keep X safe; he has just underestimated the challenges of doing so. All of the experts in the case say that what is required is a clear and cogent safety plan, and that, says the Local Authority, is lacking. The Local Authority are concerned about the robustness of the supports on the ground in the event of a problem.

75. The Local Authority has indicated that it will do what it can to support the orders if made, and to support the maternal grandfather if he seeks the support of the Local

Authority.

The experts

76. At an earlier case management hearing, I commissioned expert opinion from two independent specialists in the field of Female Genital Mutilation who agreed to work collaboratively to prepare a report, namely: Professor Tamsin Bradley in England, and Dr. Amel Fahmy in Egypt:

> i) Professor Bradley is an applied social anthropologist working in international development whose current research focuses on gender-based violence, with specific projects exploring female genital mutilation in Africa;
>
> ii) Dr. Fahmy is also an anthropologist and academic with many years of experience of studying the issue of FGM; she lives and works in Egypt. She had the advantage (as I mentioned earlier) of meeting with the paternal family, and spoke directly with them about FGM. She was – importantly – able to conduct the interviews in Arabic.

The joint report of Professor Bradley and Dr. Fahmy was reviewed by Ms Angela Sabin-Quarm from the National FGM Centre (a collaboration between Barnardo's and the Local Government Association) in London.

77. Dr. Fahmy's style of working, and her methodology, were avowedly not forensic; she did not conduct a classic risk assessment of the type with which the family court is familiar. Her approach was more investigative; she defended this as the approach most likely to yield the information required from the paternal family. Having read and heard her evidence, I am entirely satisfied as to the effectiveness of her methodology in this case. Both experts participated in an experts' telephone 'meeting' which was helpfully convened by Ms Jaffar from Cafcass Legal.

78. Dr. Fahmy reproduced, at some length, the content of her interview with the paternal family; I found that helpful. I have referenced it extensively at [71] above. When considering the contextual and individual risks in this case I have further relied extensively on her advice. Dr. Fahmy was particularly helpful in teasing out the contextual risks arising here, the individual circumstances, and the legal and practical safeguards.

79. Dr. Fahmy advised me that the paternal family "do not see FGM as a societal crime or violence against women" but rather as "harmful practice that may still exist among some but as a family they have stopped practising it". She felt that while the family do not see FGM as violation of rights *per se*, they acknowledge the harmful effects of it. She felt that the paternal family had become somewhat "enlightened" to the issue of FGM over the last two years, and to the gravity of the practice. While some of their views about FGM are evidently insupportable, their apparently enlightened understanding of the crime offers X at least some protection; further, it complements the fact that X is (in Dr. Fahmy's view) *not* "yet in the high-risk age category for FGM in Egypt, which is 9-12 years". That said, FGM Types 1 and 2 are 'widespread' in Egypt; there are a number of misassumptions and beliefs surrounding the practice which help to support its ongoing observance, and the government bodies are described as "ineffective" to eradicate FGM. Professor Bradley shared the view that 9-12 years of age was the critical and most vulnerable age-range; the paternal grandmother was cut when she was in this age bracket.

80. Dr. Fahmy was clear that the decision whether a girl would be subjected to FGM would historically be a *mother*'s decision. However, from literature and other research it has become clear that in society now when the woman in the household has undergone a painful FGM "she's not going to circumcise her daughter because she does not want to inflict the same pain on them". Professor Bradley confirmed that she too regarded it as highly significant that the paternal grandmother had experienced such trauma through circumcision "this is in line with what we know about triggers for mind-set change". In summary, Dr. Fahmy, in her oral evidence opined that X would be at "low risk" if she were to travel to Egypt for a short holiday – particularly given (a) her young age, (b) the attitudes of the paternal family (against FGM), (c) the experience of the paternal grandmother, and (d) the aspiration of the father to reside ultimately in the UK.

81. Dr. Fahmy stated that the case had achieved a degree of notoriety in Egypt; it had been reported in the media and that the case would therefore have "a very high visibility" in the media and among NGOs.

82. Professor Bradley shared Dr. Fahmy's opinion that while the risk exists, the risk to X of her being cut "at her current age" is "low". Professor Bradley confirmed that that situation may change over time, and that "we are really focusing on the medium to long term… as the child gets older, if the plan is to go ahead to continue to travel to see her family in Egypt, then I would argue that that risk needs to be continuously assessed each trip… a similar approach to the approach that's been taken in this instance". This view was confirmed by Ms Sabin-Quarm: "if she keeps going there, she's going to come into that age group where it would be the time that she should be cut… so the risk will be there as she grows."

83. The consensus view of Professor Bradley and Dr. Fahmy (extracted from the transcript of the experts meeting), was as follows:

> "I think we have agreement that risk, in terms of making a trip this summer to Egypt … is minimal in terms of the daughter being at risk during this trip … that the risk of the daughter being cut during a two week visit this summer to Egypt is probably low and that that will need to be continuously assessed".

In reaching this conclusion, Professor Bradley and Dr. Fahmy emphasised that they were particularly influenced by (a) the FGMPO remaining in place, (b) "the family views towards cutting", (c) the age of the child, (d) "we have an empowered mother and an empowered father" (the experts agreed that an empowered father is also important), (e) Egypt is a country where the political system and the administration is against FGM, and (f) the local

NGOs know that the mother and X are visiting. Professor Bradley added "I would not say there's no risk, but the risks would be low".

84. Ms Sabin-Quarm confirmed the view (expressed also by Dr. Fahmy) that the paternal grandmother's "painful FGM experience could be a strong motivation for her stance *again*st FGM". She nonetheless took the view that the risk was "high". In reaching this conclusion, Ms Sabin-Quarm had used and relied heavily on a 'FGM risk assessment tool'. I felt that this tool (which seeks to elicit yes/no answers to a series of pre-prepared questions) while useful undoubtedly as part of an assessment methodology, focused somewhat too heavily on the contextual or (what we came to know as) the 'macro-risks' in the case, without looking sufficiently at the specific and individual (or 'micro-'risks') of the individual case. Ms Sabin-Quarm placed heavily reliance on the tool; the consequence was that her conclusions were a little more formulaic and less nuanced than the more quantitative evaluation undertaken by Dr. Fahmy and Professor Bradley. Ms Sabin-Quarm's report was also light on detailed and fact-specific analysis; by applying the risk assessment tool somewhat rigidly, her conclusion ended up being, in my judgment, overly risk averse. She took the view that no travel would be safe for the whole of X's minority ("X needs to be safe"); in making this recommendation there was no recognition of the likelihood of the risk changing over time.

85. Ms Sabin-Quarm was concerned that the mother was susceptible of easy influence from the father and his family – and cited the marriage, the conversion to Islam as evidence of this. On this Professor Bradley and Dr. Fahmy disagreed.

The Children's Guardian

86. As indicated at the outset of this judgment (see [12] above) the opinion of the Children's Guardian on the central issue has shifted during the course of the litigation and indeed of this hearing. She initially supported the travel ban, expressing her concern that the mother is sufficiently vulnerable that the father may be able to persuade her to remain living in Egypt with X (and that this would be contrary to X's best interests). At the hearing before me, she was particularly impressed by the evidence of the maternal grandfather, and specifically of the dire consequences for him (and for his family back in England) of him failing to comply with his undertakings. She was also influenced by the mother's evidence in understanding the likely consequences for the grandfather if he was put in a situation in which his undertakings were breached –

> "… he would be likely to lose his own children. I know how much this mother loves this daughter, and she is close to her family and she would not refuse to come back to this country, and would not want to cut all ties with her family in the UK. This went somewhere to reassure me that the maternal grandfather will keep her safe and give an undertaking. And the mother would not allow the maternal grandfather to suffer the consequences".

87. The Guardian expressed anxiety about aspects of the evidence surrounding the family conversations on FGM, but in the final analysis could "not lose focus on what is best for the child". She felt that she could trust the maternal grandfather, though wished to ensure that certain additional safeguards were placed around the trip:

> i) That X was not taken the rural governorate of the paternal grandparents' home;
>
> ii) That the maternal grandfather "does not let [X] out of his sight";
>
> iii) That the mother reconnects with her friends, to offer some support to her, and learns some Arabic;
>
> iv) That the family and the local authority engage with the NGOs so that they are aware of the visit;
>
> v) That the father takes active steps to demonstrate an anti-FGM stance.

88. Following sight of all of the additional evidence, the Guardian's counsel, Miss Tompkins, submitted that the Guardian once again assessed the risk as "high", and associated herself with the stance of the Local Authority. She invited me to adjourn determination of the application (for an unspecified period) to await yet further information about safeguarding strategies.

89. Specifically, the Guardian submitted that I can and should derive no comfort from the evidence about the likely age at which a girl would be cut, given that the mother assessed a risk in her 4 month old daughter in 2016, when she first spoke to the health visitor. Moreover, she felt that the court could not be reassured that the decision to perform FGM would be a 'woman's' issue given the fact that the father and paternal grandfather orchestrated the medical examination of the younger female members of the family behind the backs of others.

90. The Guardian is not opposed to X being medically examined after the trip. Dr. Hodes (an expert in the field) has prepared a short report in which she considers that this would not be detrimental.

Risk

91. In looking at risk of travel in the instant case, I have sought to separate out the 'contextual' factors relevant to the case (at the hearing these became known as the 'macro-factors') from the 'individual' and specific features (or 'micro-factors') applicable to this case alone. Both sets of factors are highly relevant to the determination of risk. In helping me to form a view, and it may be for others charged with a similar task, I have set out below a set of questions which I have found it helpful to ask, to tease out the risk factors:

Contextual considerations / 'Macro' factors

i) What is the prevalence of FGM in the country to which it is proposed that the child will be taken?

ii) What are the societal expectations of FGM in the country? [5]

iii) If known, what is the prevalence of FGM in the specific region of the country to which it is proposed that the child will be taken?

iv) Is FGM illegal in the country to which it is proposed that the child will be taken?

v) If illegal, how effective are the authorities in the country in question in enforcing the prohibition on FGM?

vi) Given the extra-territorial reach of the *2003 Act*, and the fact that the act of carrying out FGM (and aiding and abetting, counselling or procuring the act) is a crime punishable on indictment to imprisonment not exceeding 14 years, is there an extradition treaty between the UK and the country to which the child will be taken (Egypt in the instant case) in the event that there is evidence of a breach of the order?

vii) What formal safeguards are available in the country to which it is proposed to take the child to mitigate the risks (access to local tourist police, FCO representatives / consular assistance, NGO workers)?

viii) At what age are girls commonly cut in the country to which it is proposed that the child will be taken? (how does this compare with the age of the subject child?).

Individual considerations / 'Micro' factors

ix) Is there a history of FGM in the child's wider family, or in the family to which the child will be exposed abroad?

x) If so, on which generation or generations of women has this been perpetrated? Specifically, what is the position in relation to the younger generation(s)?

xi) What are the attitudes of the mother and/or father to FGM generally, and/or in relation to their daughter?

xii) Is FGM / circumcision regarded as a woman's issue or a man's issue within the family? Where is the power-balance in the family?

xiii) What are the attitudes of the wider family to female circumcision generally, and/or in relation to the subject child?

xiv) What safeguards can the family themselves devise and impose to mitigate the risk?

xv) How well have the family co-operated with the authorities?

xvi) What is the professional assessment of family relationships and of the capabilities of the parents?

xvii) Are there any other specific features of the case which make FGM more or less likely?

I address these questions on these facts in the paragraphs which follow.

92. ***Contextual risk***. FGM is prevalent in 30 Countries [6]; these are concentrated in countries around the Atlantic coast to the Horn of Africa, in areas of the Middle East, and in some countries in Asia. As indicated above, it is highly prevalent in Egypt. I was advised that 92% of women in Egypt underwent FGM in 2014 [7]. It is said that more than half of Egyptian women and half of Egyptian men continue to support the practice. Mr Ekaney conceded in his final submissions that given the high incidence of FGM, it is reasonable to conclude that there is a societal expectation that girls will be cut; the mother's own internet research led her to this view too.

93. Dr. Fahmy has advised that FGM is widespread in Egypt for women of reproductive age; the most commonly practiced types in Egypt are Type 1 and Type 2; Egypt has the fourth highest cutting rate in the world. The majority (>70%) of FGM cases are performed by medical personnel. Dr. Fahmy has further advised that FGM is more prevalent in rural regions than urban areas, and among those with lower levels of education and living in poverty than those who are educated and wealthy.

94. There has been only a limited shift in the attitude and incidence of FGM over the last twenty years, notwithstanding many anti-FGM programmes; support for the practice remains at over 60% across all age groups; the general risk is "still very high" (Dr. Fahmy). FGM was outlawed in Egypt by no later than 2008. Egypt has ratified many treaties which call for the protection of women against all forms of violence; "while state protective structures exist they are unreliable and ineffective" (Dr. Fahmy); "while laws exist they have not been adequately implemented and enforced to date; in sum, convictions are rare and sentences lenient" (Dr. Fahmy). In June 2018, Egyptian NGOs launched the establishment of an anti-FGM task force to eradicate FGM. Nonetheless, Dr. Fahmy adds:

"The widely held view across civil society is that despite the presence of anti-FGM legislation, a national strategy and an implementing programme on FGM, the state

still fails to protect young Egyptian girls from the danger of FGM".

95. Just because the prevalence is high in the given country does not mean that it is likely that any and all young women are at real and immediate risk; Mr Hames rightly cautions me against attaching too much weight to this broad contextual factor lest it unconsciously leads me to indirectly discriminate against the parents and child, and/or effect a reversal of the burden of proof.

96. The fact that FGM is illegal in Egypt is of itself reasonably limited reassurance, as it said by Dr. Fahmy that the law enforcement agencies are not particularly effective in eradicating it; there are relatively low numbers of prosecutions (the local authority evidence suggests that there have been none since 2008 when the law was apparently toughened). Dr. Fahmy told me in her oral evidence that "we face challenges in having the law respected… the sanctions are not being imposed". Furthermore, there is no ready facility by which any order made here could be formally recognised and/or enforced in Egypt. There is no extradition treaty with Egypt under which arrangements could be made for the return of a party who may have breached the *2003 Act* Order (punishable as a crime). Furthermore, although a bilateral judicial agreement ("the Cairo Declaration") exists to effect judicial cooperation on international child abduction matters, it is believed to be relatively rarely (if ever) meaningfully engaged; the English High Court litigation of *Button v Salama* [8] is an illustration of the difficulties in achieving effective repatriation of an abducted child from Egypt.

97. It is most common for girls to be cut around the age of 8-12. Thus, at not yet 3 years of age, X is self-evidently well-below the age at which she would be at highest risk. This factor alone accentuates the need for the risk to remain under regular review; X is likely to be at higher risk in the years ahead.

98. ***Individual risk***: As referenced earlier, there is a history of FGM within the paternal family. The evidence is that the paternal grandmother has been cut. She described the experience as traumatic. Dr. Fahmy and Professor Bradley regard this feature as of great significance in importing an inherent *protection* into the situation, rather than a factor pointing towards its repetition. There is no evidence that the father's sisters, or nieces have been cut; the Local Authority did not, in fairness, set out to prove, nor did they claim, that they had been. Although the medical evidence produced (see [47] above) is unsatisfactory, in the absence of any affirmative evidence that these younger females in the family have been cut I must proceed on the basis that they have *not* in fact been cut. This would suggest that within the family, the practice probably (i.e. on the balance of probabilities) stopped with the paternal grandmother. Consistent with this break in traditional practice is the fact that the father's sisters have benefited from a good quality education unlike their female forebears, including a university education for his older sister; the father told me that his younger (teenage) sister aspires for a professional career as a doctor. It was reassuring that Dr. Fahmy had been left with the strong impression from the paternal family that they were "very aware of the dire consequences which they face if they contemplate the circumcision of X".

99. I am satisfied that the mother and father have, themselves, been consistent in their opposition to FGM. As I have earlier indicated (see [54]), the mother's outburst in December 2018, which may have suggested otherwise, was probably no more than an ill-judged rant. I regard the mother as being independent minded, and not likely to be suborned to the will of the father; he too has demonstrated (through his marriage to the mother) a capacity to act independently of (and possibly defiantly to) his parents. Both parents have been co-operative with the Local Authority, during an excessively long legal process. The mother is assessed as an excellent carer for her daughter.

100. As to the exercise of power in the paternal family, my strong impression was that the paternal grandmother is the powerful and most opinionated force within the paternal family. While I found it hard to make any confident assessment of her, I accept that she has strong reasons for opposing FGM for her granddaughter; circumcision would be a woman's issue in the wider paternal family.

101. In this case, it is sensibly proposed that X would travel to meet with her father in Hurghada – a leading tourist resort on the Red Sea coast. This is in preference to X and her mother travelling to the rural governorate where the paternal family reside, where the incidence of FGM is said to be particularly high. It is opined that the incidence of FGM is less in the urban conurbations than in rural areas.

102. In the absence of formal, legal, processes to enforce my order in Egypt, I caused enquiries to be made to establish whether specific safeguards could be incorporated into the plan for a trip for informal support and/or monitoring of the arrangements. In this regard, the parents were given leave to send to Mr Mohamed Elrawy (Chairman of the Board of Directors of an NGO called Rural Women Development Association), an agreed summary of the case along with agreed and relevant questions. His response arrived on 2 July 2019. He made the following offers:

i) He would be physically present in Hurghada during the period of X's visit to help the mother and/or the maternal grandfather should they require it;

ii) He could, if required, hold the travel documents of the parties during their stay;

iii) He has good relationships with the police, and could assist the mother in her contacts with them if required;

iv) He offers to contact a number of the public bodies (health, home office) to alert them to the visit of the mother and child.

This was reasonably encouraging.

103. The FCO has specifically confirmed that "For FGM cases, [staff in the consulates] will be able to provide significantly more support [than for other cases] as the victim will be considered more vulnerable … they can help in booking flights back to the UK and

obtaining correct exit visas". I was reassured that emergency travel documentation would be available to the mother swiftly if this was required. That said, on the information available to me, the assistance available from the British consular office in Hurghada may be more difficult to access. Although there is an out of hours service (offering therefore support 24/7) the opening times for consular assistance in Hurghada would be Sundays to Wednesday, 10am to 1pm. I was advised that the waiting time for an appointment will depend on the number of other cases requiring consular attention and it was not possible to give any clear estimate for this. I was advised that the mother would need to travel to the Embassy in Cairo for greater levels of assistance.

104. In relation to access to the tourist police, following the hearing (at which the mother's false claim to have tested the service was exposed: see [58](ii)), the mother's solicitor sent an e-mail to the court which confirmed that she herself had spoken to the police in Hurghada directly from a mobile phone, as indeed had the mother herself. The solicitor had also contacted the police in Safaga, which is the nearest town about 30 miles along the coast from Hurghada. During each call, the solicitor had apparently asked to speak to a tourism police officer and was put through immediately to English speaking staff. I am advised that the police were very keen to assist. The officer with whom the solicitor spoke in Safaga confirmed that the police would be able to assist with issues in Hurghada and therefore if the mother is not able to get through for any reason, she also has the option to call them in any emergency.

105. It is fair to observe that the response of the police to the telephone calls made by the parties in this case at different times has been somewhat patchy. That said, I am sufficiently satisfied that the police would be available to the mother and/or the maternal grandfather.

106. Risk evaluation: It is important in this context, as in other contexts in family law, to bear in mind that risk is dynamic. It is liable to change, and requires regular re-assessment. Risk is highly sensitive, and rarely static. Courts and parties should be alert to the possibility that as or when new evidence emerges, and/or the contextual or individual characteristics of a given situation shift, so the index of risk is likely to shift. The likelihood of an event coming to pass may increase or subside; the consequence or 'impact' of an event – if it was to occur – may also change over time. The most obvious illustration of this on these facts is that the *risk* of harm will change as X grows older; she will in a few years' time enter the age-bracket when she is statistically far more vulnerable to genital cutting. As it happens, the *impact* of the threatened harm in this case (i.e. FGM itself) will not change.

107. Just as risk requires regular re-assessment, so it is necessary to review relevant safeguards. When the risk of an event occurring changes, or the magnitude of impact of the event is assessed to increase or decrease, so must the court review the identification, relevance and effective application of corresponding protections.

Conclusion

108. As I indicated at [24] above, when considering the appropriate order in a case such as this, the statutory discretion afforded to me is a wide one; I am required to have regard to "all the circumstances" of this particular case, including the need "to secure the health, safety and well-being" of X (*Schedule 2 para.1(2)* of the *2003 Act*). I do not read the word 'secure' in the *2003 Act* as requiring me to offer a *certainty* of outcome or a *guarantee*. Given the infinite variety of circumstances and human fallibilities, I can, and should, concentrate on the reasonable and proportionate management of risk, having also regard to the very considerable harm which is being guarded against. Baroness Hale's comments in ***Re SB*** **[2009] UKSC 17** at [47] (in a somewhat different context), come to mind:

> "….clearly the steps needed to protect against some risks will be different from the steps needed to protect against others. And the overall calculus of what will be best for the child in the future will be affected by the nature and extent of the identified risks."

In making the evaluation, I accept that even if I regard the risk of occurrence as relatively modest, if the risk came to pass it would nonetheless have an extreme, and irreversible, 'impact' on the child. Inevitably the gravity of the potential 'impact' has a significant bearing on whether it is right to take the risk. This chimes with the judgment of Thorpe LJ in *Re K (Removal from Jurisdiction: Practice)* [1999] 2 FLR 1084, and Rimer LJ in ***Re R (A Child)*** **[2013] EWCA Civ 1115** at [23]: it is necessary to consider (a) the magnitude of the risk of breach of the order if permission is given; (b) the magnitude of the consequence of breach if it occurs; and (c) the level of security that may be achieved by building in to the arrangements all of the available safeguards.

109. This case has inevitably focused on risk, and the safety of X. But risk is not the only consideration and has to be weighed with other significant factors including the pressing importance of affording X the chance to meet with her father. It is her right, and the right of her father. As the Children's Guardian, Ms Odze, reminded me, it is detrimental to X's best interests to be denied the chance to form a meaningful attachment with her father.

110. I have to bear in mind the considerable strain on these parents as individuals, formally married, but not able to enjoy any real married life together. Their rights to enjoy a private and family life together, and with X, have been materially subjugated hitherto by the identified risks to X and the need to protect her. The parents have withstood significant professional intervention and scrutiny.

111. I have outlined the contextual ('macro') and the individual ('micro') risks in this case. Having done so I have reached the conclusion that the risks identified are sufficiently significant as to justify the imposition of a worldwide travel ban at least at present time. There are many 'contextual' high-risk factors surrounding FGM in Egypt, and there are few 'standard' safeguards available, given the relative impotence of the law enforcement agencies, and the low numbers of prosecutions. The incidence of FGM (92%) in Egypt

(the country where the father lives and to which the mother would inevitably be drawn) weighs heavy in the balance. The lack of effective enforcement of the domestic law in Egypt, and/or of the recognition and enforcement there of orders made (or undertakings given) in this country, is a significant concern; it appears from the expert evidence I have received that the state is still failing to protect young Egyptian women (see [93]-[96] above). The availability to the mother of FCO or police may be vulnerable to circumstance (see [103]-[105]). All of this plays out against a backdrop, as Mr Ekaney is right to remind me, of a societal expectation of female circumcision, even if that is – among younger generations – a changing expectation.

112. Moreover, I am concerned that within this family some specific concerns have emerged through the evidence which *taken in combination* justify this approach:

> i) the mother's evident anxiety about the possibility of FGM on her then 4-month old daughter, as revealed by her comments to the health visitor in 2016;
>
> ii) the mother's remarks to her college friend in 2018, which, although readily explicable as the consequence of frustrations and pressure, nonetheless reveal a distorted understanding of the characteristics of FGM (a belief that Type 1 was "not the worst level");
>
> iii) the enduring lack of clarity on the part of the parents and the paternal family about conversations had, or not had, about FGM, particularly given its high prevalence in the region in which the paternal family live is unsettling; this is not of itself a criticism, but in part a consequence of the circumstances in which I am trying the case;
>
> iv) the views of the wider paternal family who "do not see FGM as a societal crime or violence against women", even though they acknowledge that it is a "harmful practice that may still exist among some";
>
> v) the arrangements which the paternal grandfather and father made to subject the two younger members of the family to examination without the knowledge of the paternal grandmother or the young woman's husband; this raises questions about secrecy and concealment within the paternal family;
>
> vi) the somewhat casual regard of the parents to the important issue of safeguards; I was very disappointed that the mother misled the court, in declaring at the adjourned hearing that she had satisfied herself of the accuracy and effectiveness of police contact numbers in Egypt, only to have to concede that she had not done so and that the numbers were in fact wrong;
>
> vii) the untested nature of the supervision arrangements, when so much trust is reposed in the maternal grandfather;
>
> viii) the question marks over the enforceability of any undertakings given by the parties in countries abroad (particularly Egypt). I have been unable to identify how (if at all) the assurances and undertakings would have a real and tangible effect in the jurisdiction in which they are to operate and be capable of being easily accessed by the mother or the maternal grandfather. The Egyptian lawyer, whose advice was commissioned for the earlier hearing, offers little more re-assurance than that the undertakings "may show the good intentions of the father towards protecting [X] from being subject to FGM. However, on the legal and practical level, these promises do not supplement the protection of [X] from FGM while in Egypt."

113. As earlier indicated (see [10] and [11] above), by the end of the hearing no party, not even the parents argued against the continuing albeit interim imposition of a worldwide travel ban.

114. When surveying the entire picture, I am satisfied that there are relevant protections which serve to neutralise or mitigate some of the key risks discussed above. First, X's age puts her outside of the age at which young females are conventionally cut in Egypt. Secondly, I am entirely satisfied that *both* parents do not wish X to be circumcised or cut, and are against the practice of FGM for their daughter and generally. In short, I accept their evidence on this, on which they have been broadly consistent. The maternal grandfather is, I am satisfied, equally resolutely opposed to circumcision of his granddaughter. Thirdly, the mother is, I accept, an "exemplary mother" who is bonded closely with her daughter; this operates as a significant protective factor. Fourthly, I accept Dr. Fahmy's opinion that the fact that the paternal grandmother has been cut (with painful and long-standing traumatic consequences) is a factor which is likely to *reduce* the incidence of it in younger generations within the paternal family. Given her dominant role in the household, this is material.

115. I am further satisfied that, even though the paternal grandparents continue to espouse more traditional cultural values typical of their rural lives, the father is an independent and more 'modern' Egyptian. This assessment is supported by the view of the maternal grandfather who described his surprise at first meeting the father as to how similar he was to many young English men ("well-presented, fashionable … into music and movies … quite a liberal man … he is not the type of person who would break the law"). I am satisfied that it is material that in marrying the mother, an English woman and a recent convert to Islam, he had demonstrated an independence of mind and an ability to break with tradition; he told Dr. Fahmy that his own mother had opposed the marriage initially (the mother said that the paternal grandmother did not speak to her son [the father] for five months after the wedding) although was now accepting of it. These are all factors which may point against the perpetuation of the historic and barbaric practice within the paternal family.

116. I have much in mind (see [56] and [63] above) that the mother and father harbour a unified ambition to live together as a family in England; although there is a single unexpected reference (in a court order: see [59](v)) to the possibility of the parents wanting to live in Egypt, the parents have been consistent that a family life in England is

their objective. The father told Dr. Fahmy, as he told me, that he wanted X to be raised in England. These assertions, if sincere, would tend to militate against the perpetration of FGM on X in the event of a visit to Egypt; the commission of such an offence would be likely irredeemably to damage the father's prospects of ever coming to visit, let alone live in, the UK.

117. The parties have offered undertakings, which are set out in a schedule to this judgment. The *2003 Act* makes no provision for the court to accept undertakings in relation to the act of FGM itself (i.e. instead of making a Female Genital Mutilation Protection *Order*); this is unlike the provisions of *section 63E* of the *Family Law Act 1996* in respect of Forced marriage Protection Orders. FGM is a form of violence against the victim, and it is always necessary for an order to be made, so that breach may be punishable as an offence. I propose therefore to make the relevant order. The undertakings offered (set out below in the schedule attached to this judgment) address behaviours around the proposed trip to Egypt, to ensure X's safety.

118. The presence of the maternal grandfather on the proposed trip to Egypt, and his promise to be in the constant company of X, offers a significant safeguard against the harm of FGM. I observe that this protective factor was *not* a feature of any plan advanced before Russell J. I found the maternal grandfather to be an essentially honest man, who has much to lose were he to fall short of the expectations on him, and specifically if he were to breach his undertakings. The mother knows this too. He himself sensibly proposed that the prospect of any further trip abroad for X be reviewed after the first trip has concluded. Mr Mohamed Elrawy (see [102] above) has also helpfully offered to play a part in the arrangements for the visit and I accept that offer; he offers valuable local knowledge and evident protection to X on the ground in Egypt.

119. The case has acquired a degree of notoriety in Egypt. The decision of Russell J was apparently reported in the media. I am satisfied that, insofar as it is right, this is likely to operate as a protective factor in itself. X should be reasonably well-known to the legal and medical authorities.

120. As I indicated at the outset of this judgment (see [10]) the parents' case has now been pared back to a proposal for a single, relatively short, trip to Egypt as an exception to the worldwide travel ban. The case for the parents has *not* been presented to me on the basis that any 'travel ban' should be limited to a ban on travel to Egypt only (i.e. leaving the mother free to take X to other countries, save probably those where FGM is widely practiced). It is highly likely that if the mother wishes to take X to another foreign country, different considerations will apply; the contextual and individual questions around risk will need to be answered in relation to that specific proposal. It may be that while there would inevitably be a risk of the mother and X making an onward journey to Egypt from any other country, a less restrictive regime for the trip could be imposed.

121. While not losing sight of the fact that the risk to be guarded against constitutes a heinous form of criminal ill-treatment, and while accepting the 'obligation' on me (see [28]) to take measures within the scope of my powers to avoid the risk, in all the circumstances I am nonetheless satisfied that sufficient safeguards can be put in place around X to allow for her to have a short, and carefully managed, trip to Egypt later this year to meet her father. The specific arrangement proposed and discussed in this judgment, encircled with clear precautionary measures, appropriately balances the crucial rights – the protection of X's rights under *Article 3,* and the preservation of her rights (and those of her parents) under *Article 8* of the *ECHR*. I see no value in deferring a decision about the trip at this stage, as advocated on behalf of the Children's Guardian; I consider that I have enough information on which to reach a concluded view. In reaching that view, I have weighed and analysed carefully the risks outlined above, the ways in which those risks can be mitigated, and the importance of X and her father having the chance to meet and spend time together. I am fortified by knowing that Professor Bradley and Dr. Fahmy assess the risks *currently* as "minimal" (see [83] above). I believe that this exercise has been faithful to the guidance offered by Moylan LJ in the concluding words of paragraph 31 of the judgment at [2018] EWCA Civ 1825 (see [30] above).

122. I wish to underline that the single trip which I shall authorise is for X to meet and spend time with her *father,* and it should take place in Hurghada (*not* to involve any travel outside of Hurghada, and for the avoidance of doubt *not* to the rural governorate in which the paternal family live). I do not support, nor will I permit, any meeting between X and the wider paternal family *at this stage*. I realise that this will be a disappointment to the wider family, and possibly to the father; I am conscious of the excitement and anticipation of X's possible visit to Egypt, but I have to prioritise X's relationship with her father, and need to consider X's safety first and foremost. Having had the chance to assess the characters of the paternal grandparents, I believe that it would be excessively onerous on the maternal grandfather to have to supervise contact for them with X on the first trip. I consider that there will be sufficient challenges for him in taking responsibility for X in her week's stay in Egypt without having to manage this too. The paternal family speak no English, and the maternal grandfather no Arabic. I suspect that the paternal grandmother would find it impossible to control her emotions in a meeting with her granddaughter particularly after the delay in introducing them. I will truly only feel comfortable with an arrangement for X to meet her wider family when the arrangements for a visit to Egypt have been 'tried and tested' and the maternal grandfather has had the chance to familiarise himself with the locality, the father, the officials 'on the ground' in Egypt, and assess for himself the issues and potential risks.

123. The trip to Egypt in September 2019 (or as soon thereafter as it can be arranged) will therefore take place as an exception to the general travel ban. The trip will be for no more than one week; it should take place in term-time so that X will be returned to her nursery straight after the trip where she will then be seen by professionals. The mother, the maternal grandfather and X will stay in a tourist resort hotel. The mother, the father and the maternal grandfather must be prepared to give the undertakings set out in the schedule appended to this judgment. I direct that a short hearing should be convened (ideally, though not necessarily, before me) for the parties to be sworn on their Holy books (as they chose to do when giving evidence) as they give these undertakings.

124. I propose to direct that X's passport shall continue to be held by the court until its expiration or further order, *save that* it may be released to the maternal grandfather 48 hours before the date/time of the flight to Egypt, and shall be returned by him no later than 48 hours after their return. I shall forbid any person from applying for a further passport for X without leave of the court. I direct that the order shall be served on:

i) The Home Office;

ii) Her Majesty's Passport Office

iii) The Foreign and Commonwealth Office for further transmission to the consulate in Egypt;

iv) The Egyptian Embassy.

125. It has been proposed by the Children's Guardian that X should be medically examined on her return. While the proposal for such an examination may operate as a deterrent to FGM while abroad, and while it may offer some reassurance to the professionals that X had not been cut on the trip, I am insufficiently persuaded that it is proportionate or appropriate to subject X to such an examination in these circumstances. Both medical advisers to whom the Local Authority had raised this issue were opposed to this course. Plainly if specific cause is given on her return to justify an examination (the nursery staff may pick up an issue), then I would obviously re-consider this position on application by any of the parties.

126. As indicated at [106] above, it will be necessary to re-evaluate the risks of a further trip once this forthcoming trip has taken place. While visits to Egypt may appear to be safer as the maternal grandfather becomes more familiar with the arrangements, so will it be necessary to ensure that familiarity with the arrangements does not cause guards to be dropped. Furthermore, the risk increases as X grows older; there is a strong case for engaging X in direct work to safeguard her when she is old enough to benefit from this.

Order

127. The order shall recite the fact that X is a British Subject and not an Egyptian national. It shall further record that she lives with her mother in England, and is habitually resident in England and Wales.

128. The central order shall be a FGMPO – directing that:

i) neither the mother nor the father shall force, attempt to force or otherwise instruct, or encourage or permit any person to carry out female genital mutilation/female circumcision on X;

ii) the mother and the father shall be prohibited from instructing or otherwise encouraging X to undergo any form of female genital mutilation/female circumcision; and shall take all necessary steps to prevent X from being subject to female genital mutilation/female circumcision.

These injunctions shall remain in place until X's 16th birthday unless varied or otherwise discharged by further order of the court.

129. I propose to direct that until the date of the hearing which shall be scheduled for later in 2019, and save for one return trip to Egypt, the mother and the father or each of them are prohibited whether themselves or by instructing or encouraging others from:

i) removing the child X from the jurisdiction of England and Wales;

ii) obtaining a passport or any other travel document for X if one has not already been obtained.

130. I shall permit the mother to travel with X out of the jurisdiction to Egypt accompanied by the maternal grandfather for the period of one week on the dates proposed by the parties for the purposes of X meeting her father ("the trip"). The trip is conditional on the following;

i) The undertakings recorded in the schedule are given formally by the parties and by the maternal grandfather and are complied with in full;

ii) The mother shall provide to the other parties and to the Court an emergency number for the Police in Hurghada on or before [a date to be agreed];

iii) The details of the trip will be shared with Mr Mohamed Elrawy the Chairman of the Board of Directors of the NGO called the Rural Women Development Association;

iv) The mother and the maternal grandfather will contact an English-speaking lawyer in Hurghada (the FCO has recently helpfully provided a link to a list of such lawyers), so that contact has been established with a lawyer before the trip begins;

v) During the trip, X, her mother and the maternal grandfather shall reside at […] Resort, Hurghada and shall ***not*** reside anywhere else;

vi) The maternal grandfather shall supervise all contact X has with her father;

vii) The father shall ***not*** sleep in the accommodation in which the mother, X and the maternal grandfather are residing and must leave it in any event by 8:30pm in the evening;

viii) The local authority (by the social worker Tsitsi Masanga) shall be kept informed by text or email about the progress of the trip by the mother and maternal grandfather at least every 48 hours;

ix) X shall be returned to the jurisdiction of the court on or before the [date to be provided];

x) The maternal grandfather shall deliver up X's passport to the Court no later than [date to be provided].

131. There shall be express liberty for any party to apply on short notice to me, if available, in the event that the steps outlined above, which are conditions precedent for the trip, are not fulfilled, or not capable of being fulfilled.

132. The application of the local authority shall be further considered by me (if available) on (a date to be fixed) with a time estimate of (up to 2 days) when the following shall be considered:

i) Review of the trip and compliance with the undertakings given above;

ii) Whether the travel ban (and associated orders and undertakings) should continue and if so whether provision should be made for any further trips out of the jurisdiction and if so, on what terms;

iii) Whether the court should impose any requirements on the applicant;

iv) The future role, if any, in these proceedings for the applicant local authority, given that there are no child protection concerns in respect of X in England.

Post-script

133. Last but by no means least, I would like to commend specifically the conscientiousness of Mr El Khir, the interpreter who was present throughout the hearing, and who translated the entire proceedings via video-link to the father and wider family in Egypt. He performed his task with great skill, patience, and discretion. I know that I speak for all those involved in the case in expressing my gratitude to him.

134. That is my judgment.

SCHEDULE

UNDERTAKINGS TO BE GIVEN BY THE MOTHER

1. The mother undertakes not to take X out of the jurisdiction save for the trip to Egypt in September 2019.

2. The mother shall ensure that X shall reside throughout her time in Egypt at the [name redacted] Resort (full address)

3. The mother undertakes not to remove or attempt to remove X's passport or travel documents from maternal grandfather at any time.

4. The mother undertakes to ensure that X is in the presence of the maternal grandfather throughout the trip and not to remove her from his presence at all during the trip.

5. The mother undertakes that if and when she spends time with the father away from the resort, X shall remain with the maternal grandfather in the resort.

6. The mother undertakes to comply with the arrangements that the maternal grandfather may make for the supervision of all of the contact between X and her father.

7. The mother undertakes to ensure that the father shall not sleep overnight in the accommodation at [name redacted] Resort occupied by X, her father and her and that he shall leave the resort by 8:30pm each night.

8. The mother undertakes not to permit any contact between the Paternal Family and Aya during the trip permitted below.

9. The mother undertakes to keep the local authority social worker informed of the progress of the trip at least once every 48 hours by text or by email.

10. The mother undertakes to return X to the jurisdiction of this court at the end of the trip and to immediately notify the local authority social worker by email when they arrive back in the UK.

11. The mother undertakes to make X available for a social work safeguarding visit upon their return from the trip.

12. The mother undertakes to provide the local authority and Mr Mohamed Elrawy the Chairman of the Board of Directors of the NGO called Rural Women Development Association that can assist her in Egypt with a copy of the flight and accommodation bookings not later than one month before the trip.

13. The mother undertakes that upon arrival in Egypt she will contact Mr Mohamed Elrawy the Chairman of the Board of Directors of the NGO called Rural Women Development Association and inform him of her arrival and confirm her contact details including phone numbers whilst in Egypt.

14. The mother undertakes that within one hour of arrival at the resort in Hurghada, she will send an email to the local authority confirming the family's arrival at the resort.

15. The mother further undertakes that during the trip the maternal grandfather and she shall both be responsible for taking X to the toilet.

16. The mother undertakes to have a mobile phone, charger and plug adapter with her at all times when outside of the resort and the current telephone numbers for the police, Consulate assistance and Mr Mohamed Elrawy the Chairman of the Board of Directors of the NGO called Rural Women Development Association be saved in her mobile phone.

17. The mother undertakes to inform her friends, A and B who reside in Hurghada of her travel arrangements not later than one month before travel. The mother shall provide their contact information to the local authority, the British Consulate, and to Mr Mohamed Elrawy no later than one month before travel.

UNDERTAKINGS TO BE GIVEN BY THE MATERNAL GRANDFATHER

1. The Maternal Grandfather undertakes to provide to the Local Authority copies of the return flight tickets for himself and X, and details of the itinerary, address of the resort hotel, and contact numbers while in Egypt no less than 14 days before the date fixed for travel;

2. The Maternal Grandfather undertakes to take all necessary steps to prevent X from being subject to female genital mutilation/female circumcision;

3. The Maternal Grandfather undertakes to take and retain safe and exclusive possession of X's passport for the duration of the trip, returning the passport to the court within 48 hours of X's return from Egypt;

4. The maternal grandfather undertakes not to allow any other person access to, possession and or control of the passport during the trip save for the Egyptian immigration authorities for the purposes of registration on arrival to or departure from Egypt or by the manager or employees of the [name redacted] Resort in pursuant to their legal duties or resort policy.

5. The maternal grandfather undertakes to accompany his grand-daughter X and the mother for the trip to Egypt in September 2019

6. The maternal grandfather undertakes that X will be in his presence throughout the trip and that they shall reside at [name redacted] Resort in Hurghada during the trip to Egypt.

7. The maternal grandfather undertakes to supervise all contact between X and her father,

8. The maternal grandfather undertakes not to permit any contact between X and her paternal family.

9. The maternal grandfather undertakes to inform the British Consulate in Egypt, address being 7 Ahmed Ragheb, Garden City, Egypt and also Mr Mohamed Elrawy the Chairman of the Board of Directors of the NGO called Rural Women Development Association of the proposed hotel/accommodation 7 days before departure and within 2 hours of arrival at the accommodation of their arrival.

10. The maternal grandfather undertakes to ensure that X shall sleep in the same room as him at the resort.

11. The maternal grandfather undertakes to ensure that the father shall leave the accommodation where X and her family reside by 8:30pm every night in any event.

12. The maternal grandfather undertakes to keep the social worker informed about the progress of the trip by text or email at least every 48 hours.

13. The maternal grandfather undertakes to ensure that X is returned to this jurisdiction at the end of the trip.

14. The maternal grandfather undertakes to deliver up X's passport to the court immediately at the end of the trip.

15. The maternal grandfather undertakes that he and the mother shall both be responsible for taking X to the toilet.

16. The maternal grandfather undertakes that he shall ensure that he shall have a mobile phone, charger and plug adapter with him at all times when outside of the resort and the telephone numbers for the police, Consulate assistance and the number of Mr Mohamed Elrawy the Chairman of the Board of Directors of the NGO called Rural Women Development Association shall be saved in his mobile phone.

UNDERTAKINGS TO BE GIVEN BY THE FATHER

1. The father undertakes to comply with all arrangements that the Maternal Grandfather may make for the visit of X to Egypt, and specifically for the supervision of his contact with X.

2. The father undertakes not to sleep overnight in the [name redacted] Resort and to leave it by 8:30pm each night during the trip.

3. The father undertakes to support the mother in accessing support from local organisations in Egypt, should she require this;

4. The father undertakes that he will not apply for any Egyptian or other travel documents

for X.

5. The father undertakes that he will not remove to attempt to remove X's passport from the maternal grandfather at any time.

6. The father undertakes to take all necessary steps to ensure that X, the mother and the maternal grandfather are free to leave Egypt, and return to the jurisdiction of England and Wales, at the conclusion of the forthcoming trip.

7. The father will honour his signed attestation (21 March 2019) to the effect that he supports the freedom of X to travel.

8. The father undertakes that he shall not arrange any supervised contact between any members of the Paternal Family and X during the trip permitted by this order.

1 [79](ii) "Knowledge and understanding of the classification and categorisation of the various types of FGM is vital. The WHO classification is the one widely used. For forensic purposes, the WHO classification, as recommended by Professor Creighton, is the one that should be used"

2 Source: HM Government's Multi Agency Guidance

3 Source: HM Government's Multi Agency Guidance

4 "The law operates a binary system in which the only values are 0 and 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened."

5 I note that in *Re M* Gwynneth Knowles J had specific regard to the "societal pressures within Somalia and within the Somalian community in this jurisdiction" ([29])

6 HM Government: Multi-Agency Statutory Guidance on Female Genital Mutilation (April 2016)

7 I note that Gwynneth Knowles J recently referred to the prevalence at 91% in Egypt: *Re M (Female Genital Mutilation Protection Order: No order on application)* [2019] EWHC 527 (Fam) at [11]. She referred to the prevalence being 27% in Kenya and 98% in Somalia

8 See for a summary of the history and the failed efforts to achieve return of the child the judgment at [2019] EWHC 363 (Fam).