

**IN THE FAMILY COURT**  
**SITTING AT NEWCASTLE**

Date: 13 February 2023

**Before: Recorder Hames KC sitting as a Deputy High Court Judge**

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**Between :**

**H**  
**A child by her children’s guardian SARAH SMITH**

**Applicant**

**- and -**  
**(1) M**  
**(2) F**

**Respondents**

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**Mr Tim Donnelly for the applicant**  
**Mr Nkumbe Ekaney KC for the first respondent**  
**The second respondent in person**

Hearing dates: 30-31 January 2023; 1-3 February 2023

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**APPROVED JUDGMENT**

I direct that 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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This judgment was delivered in private. The judge has not given leave for this version of the judgment to be published. No person named in this version of the judgment may be identified by name or location and the parties’ anonymity 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.

This judgment was handed down on 10 February 2023 by circulation to the parties’ representatives by email. The date for hand-down is deemed to be on 10 February 2023.

## Introduction

1. I am concerned with the welfare of H who was born in the UK on 10 May 2015. She is now 7 years old. Her mother is M who is now a British citizen but was born and brought up in The Gambia. H believes her father to be F who is English. F and M married in The Gambia but are now separated and divorced. F is registered as H's father on her British birth certificate.
2. H is represented in these proceedings by her children's guardian Sarah Smith. Her predecessor as guardian made an application on 1 June 2021 for a Female Genital Mutilation Protection Order under Part 1 of Schedule 2 of the Female Genital Mutilation Act 2013. On 2 June 2021 the court made a protection order in standard terms to prevent M subjecting H to female genital mutilation ("FGM"). That order was not objected to and continues today and it is common ground that I should continue that order.
3. The court on 2 June 2021 also made an order, which was neither agreed or opposed by M, preventing her from removing H from England and Wales until further order. While M does not seek an order discharging that world-wide travel ban, she seeks a variation of it which would give her a specific permission to travel to The Gambia with H from 29 March to 16 April of this year.
4. There has been extensive litigation between F and M in respect of H's contact with F. Although F's application for a child arrangements order for contact was formally resolved by an order dated 9 November 2021 providing that H have overnight contact with F on every other weekend from Saturday morning until Sunday afternoon, that

contact quickly broke down and H has not enjoyed face to face contact with F since January 2022.

5. With the consent of all 3 parties, I made it clear at an earlier case management hearing that I would investigate the issue of contact at this final hearing and, if necessary to promote H's best interests, make further provision for H's time with F. The parties reached interim agreement that contact between H and her father would resume by remote means.
6. Shortly before this hearing, paternity tests confirmed that F was not in fact H's father. This affected case management, potentially introduced new risk factors for the experts to consider and caused considerable anguish and soul-searching to both M and F. H has not been informed that F is not, in fact, her father, and it is common ground that she should not be told without specific expert guidance and support.

*The parties' positions at the final hearing*

7. M provided me with a draft order setting out in detail the safety measures she proposed to protect H from the risk of FGM. I will set this out in more detail later in his judgment, but in summary the protection she proposed was threefold: orders and undertakings of the court; the support of her family in The Gambia; and support and monitoring from a non-government agency, The Girls Agenda, in The Gambia.
8. She proposed that F should spend time with H by video call for a couple more sessions before proceeding to face to face visits supervised by her brother MU who is currently living in England. After learning of the guardian's views, she suggested that her brother should support the handovers of H to F and then remain for around 5-10 minutes to check that H was comfortable to go with the father.

9. She invited the court to adjourn the final determination of both issues, make an interim order allowing a single trip to The Gambia and an interim order progressing contact, and then restoring the proceedings for final determination.
10. F initially opposed the relaxation of the worldwide travel ban. However by the time of the final hearing he resolved not actively to participate on the issue, instead leaving it to the professionals and ultimately the court to resolve the issue. His main concerns were that the (unidentified) father in The Gambia would rely on Sharia law to separate H from her mother, retain her in The Gambia and, potentially, inflict FGM on her.
11. He initially sought immediate unsupervised contact with H but accepted that it would be a good idea to have at least one further remote contact session. He saw no need for any supervision of contact and proposed that M should undertake the handovers. He had previously put forward as potential supervisors; his youngest daughter, PHS; his ex-partner and PHS's mother, PHS' mother; his twin brother PU; and his wife, PU's wife. However by the conclusion of the hearing he had largely accepted that MU would be a more appropriate supervisor, if one was really necessary.
12. The children's guardian supported and informed M's position generally. She agreed that H should be permitted to travel to The Gambia for a single trip, but with all the necessary safeguards proposed by M. She then proposed that the matter be returned to court for final determination.
13. The guardian was opposed to the mother having to be present at handovers of contact because of previous findings of domestic abuse made against F and because PD12J made it inappropriate and unsafe. She clearly did not consider that H's time with the person she believed to be her father should be supervised once H was safely in F's

care; but she supported MU facilitating handovers and remaining present to ensure that H was happy in his care.

14. She sought expert advice on the question of how and when H should be told about her paternity.
15. All parties recognised that the assessment of the risks to H of going to The Gambia and whether or not the worldwide travel ban should be varied was for me to determine.

### Background History

16. The parties met online in about 2013 when M was living in The Gambia and the father in England. F is 57 and M is 34. He has 3 daughters, now adult, from an earlier relationship: PHS2, PHS3 and PHS. He travelled to The Gambia with a friend of his who already had a partner from The Gambia in order to meet M for the first time on about 13 April 2013. A sexual relationship started and the parties married in The Gambia on 18 April 2013 just a few days after they met. F converted to Islam, the religion of M, taking the Islamic name of O which is also the name of M's father. F then returned to England alone but worked towards bringing M to England. He was able to obtain a visa for M to enter in the UK in December 2014 when she was already pregnant with H who was born the following May.
17. The birth was very painful for the mother because she had been subjected to FGM as a 12-month old baby. On 11 May 2015, the midwifery services referred the family to local social services (UK City County Council) because of the risk of FGM. It appears that no further action was taken. Nothing was done to prevent M, F and H travelling

to The Gambia in 2016 for a short break to visit the maternal family. They all returned safely to England.

18. The parties separated in January 2017 when M and H were placed in a refuge. H had no direct contact with F and so proceedings were issued by F. In those proceedings, M made serious allegations of domestic abuse against F in respect of herself and H.
19. The nature of the parties' relationship was investigated by Her Honour Judge Smith at a fact-finding hearing in 2019 as a prelude to determining F's application for a contact/spends time order. Despite the vehement denials of F and his case of fabrication against M, the judge made serious findings of sexual abuse against F including vaginal, anal and oral rape, sexual abuse, physical violence and psychological abuse, but absolved him of physically or emotionally abusing H. I have read her judgment. It has not been appealed and no-one has suggested I should re-visit her findings which I therefore adopt in their entirety. However F continues to deny the findings made against him, particularly that of rape.
20. The father appears to have raised the issue of paternity in those earlier proceedings but only very late on and as a challenge to the Child Maintenance Service when he was assessed for child support. He did not pursue the issue in the court proceedings as to do so was inconsistent with his plea for contact as H's father. No paternity tests were therefore directed.
21. Those proceedings concluded on 16 August 2019 with an order providing for H to have supervised time with F for a minimum of 2 hours every fortnight.
22. In September 2020 F issued a fresh application for a child arrangements order because he alleged contact was not happening. H was joined as a party following reports from

Cafcass identifying a risk of FGM leading to the extant FGM protection orders and worldwide travel ban. The risk assessment which was carried out on 24 May 2021 does not identify any particular development since H's birth but identifies a number of risk factors linked to the propensity of FGM in The Gambia and concern about the inability of M to protect H.

23. Accordingly the children's guardian made an application for an FGM protection order with the result that orders were made as was outlined above.
24. H has remained living in England with M. They are both British citizens and both have British passports. Neither has any travel document issued by The Gambia. She attends a local school. She shares a bedroom in a two-bedroomed property with her mother; the other bedroom is currently occupied by her maternal uncle, MU, who is 18 and in England for educational purposes. M works as a part-time housekeeper at a local hotel. In her evidence she disclosed to me that she had a boyfriend, a Portuguese national who was born in The Gambia. He has met H but does not live with her.
25. H had some contact with F in December 2021 until February 2022 supervised by PHS2. Sadly there was a huge family argument between him and PHS2 which stopped her agreeing to supervise contact. He has tried to re-start contact, but no alternative suggestions for a supervisor appear to have been made on behalf of M. I have not investigated why this happened but I accept it was not for want of trying by F. Following a hearing before me, it was agreed that contact should re-start by remote contact. H has now had 2 remote contacts by video in December 2022 and one in January 2023.

26. F has undertaken a DAPP (Domestic Abuse Perpetrator Programme) with a local agency and has engaged positively. The guardian reports that he was able to demonstrate insight into his domestic abuse, despite denying the findings to me
27. H has continued to see PHS2 and PHS3 who she sees as her sisters. PHS2 in particular has provided support to H and M, but remains estranged from her father.
28. M has undertaken a FGM awareness course.

### Case Management Issues

29. It is regrettable that the issue of FGM and the trip to Gambia has taken so long to be determined although it is not necessary for me to catalogue each step taken and to attribute blame for the delay. There appear to have been two particular difficulties. First, the identification a suitable expert to interview members of the maternal family in The Gambia to assess the risk of FGM should H travel there. This need was identified early on in the proceedings by Professor Tamsin Bradley, a well-known academic and expert in FGM issues who was very properly jointly instructed soon after the FGM application was made. Second, the need to obtain permission from the authorities in The Gambia for family members living in the Gambia there to give remote evidence to the court.
30. The proceedings were re-assigned to a judge of High Court level and allocated to me in October 2022. The parties were able, with funding from the LAA, quickly to identify Matida Komma as a suitable in-country expert who had been suggested by Professor Bradley. Having considered guidance from the Head of International Family Justice and the Family Division Liaison Judge, as well as my own experience both as counsel and judge, I took a pragmatic line and directed that maternal family



members should make witness statements and be available to give oral evidence by video link at the final hearing.

31. As Her Honour Judge Smith had made findings of domestic abuse, M is a vulnerable person and FPR12J and 3AA are engaged. At her invitation and without any objection from F, I approved participation directions that she would not be asked questions by F but instead Mr Donnelly would address the issues F had raised in his statements.

### Paternity

32. There remained an issue about paternity. While F emphasised to me that he would still seek contact regardless of whether tests showed him not to be H's father, he still expressed doubts about whether H was his child. Given there was sufficient time before the listed final hearing, I directed with the agreement of the other parties that there should be paternity tests.
33. To the consternation of M and the disappointment of F, the first test results showed that F was not the father. F accepted the result, stressing that he still wanted to be involved in H's life and to spend time with her. He told me he would no longer actively oppose H travelling to The Gambia but leave it to the professionals and the court. He was reluctant to attend every day of the hearing because of his work commitments and because he was only seeking an order to spend time with H.
34. M did not accept the result. In a written statement she wrote

*"I do not accept these results as F is the only person whom I have had a sexual relationship with, and therefore he is H's biological father... I would like to reiterate to the Court and parties that I did not have a sexual relationship with any other person other than F at the time of H's conception. F is H's biological father."*

35. She applied for a second test and for further samples to be taken. As there would be no risk to the timetabling of the final hearing, I acceded to her application. I am extremely grateful to F for agreeing, despite his initial misgivings, to provide a further DNA sample. In the week before the final hearing the second test results confirmed that F was not H's father.
36. On the last working day before the final hearing, M's solicitor sent me a further witness statement, without formally filing it with the court and without serving it on H's guardian or F. I have read that statement. It provides an explanation for H's conception consistent with the results of both paternity tests.
37. M also applied for a direction pursuant to FPR11.7(2) which provides
- “the court may direct the withholding of any submissions made, or any evidence adduced, for or at any hearing in proceedings to which this Part applies:*
- (a) In order to protect the person who is the subject of the proceedings’ or*
- (b) For any other good reason.”*
38. I was invited to consider that application immediately prior to the commencement of this hearing, without informing either F or the children's guardian.

*The application to withhold disclosure of M's final statement*

39. I duly heard, without notice to the other parties, M's application to withhold her statement as a preliminary issue at the outset of the hearing.
40. The ambit of FPR 11.7(2) is slightly wider than FPR21.3 which enables a party to apply to court for an order withholding inspection of a document. I was not referred to

any authority specifically on how the court should exercise its power under FPR11.7(2) but I was referred to authorities on the exercise of the court's power to permit a party to withhold inspection of a document. Mr Ekaney KC, on behalf of the mother, agreed that there was no difference to the applicable principles.

41. In *Durham County Council v Dunn* [2012] EWCA Civ 1654, Maurice Kay LJ summarised the relevant applicable principles to withholding disclosure of a document in children proceedings:

*“First, obligations in relation to disclosure and inspection arise only when the relevance test is satisfied. Relevance can include “train of inquiry” points which are not merely fishing expeditions. This is a matter of fact, degree and proportionality. Secondly, if the relevance test is satisfied, it is for the party or person in possession of the document or who would be adversely affected by its disclosure or inspection to assert exemption from disclosure or inspection. Thirdly, any ensuing dispute falls to be determined ultimately by a balancing exercise, having regard to the fair trial rights of the party seeking disclosure or inspection and the privacy or confidentiality rights of the other party and any person whose rights may require protection. It will generally involve a consideration of competing Convention rights. Fourthly, the denial of disclosure or inspection is limited to circumstances where such denial is strictly necessary. Fifthly, in some cases the balance may need to be struck by a limited or restricted order which respects a protected interest by such things as redaction, confidentiality rings, anonymity in the proceedings or other such order. Again, the limitation or restriction must satisfy the test of strict necessity.”*

42. In argument, I queried why the statement should not in the first instance be disclosed to the children's guardian. While Mr Ekaney KC had in a written submission

suggested that service even on the guardian might compromise (in the sense of fetter) the ability of the guardian to provide the court with objective analysis, he conceded, quite properly in my judgment, that it should be disclosed. It appeared to me that I would require assistance from the children's guardian both as to whether the withholding of the statement was required for the protection of H. Disclosure to the guardian would also be consistent with the approach taken in the analogous situation where the withholding of documents from a file held by the Secretary of State for the Home Department is sought by asylum seekers who as parents are involved in related children proceedings – see *G v G [2021] UKSC 9*. It is left to the guardian and her legal advisers to assist the court on the issues relevant to its non-disclosure to other party, usually the other parent.

43. After due reflection and consideration the Children's Guardian supported the application to withhold the statement from F. I accepted the joint submissions made by Mr Donnelly and Mr Ekaney ruling, with an important caveat, that the statement should be withheld from F. With their agreement, I postponed the giving of my reasons to this judgment which will be available to F in its entirety. Those reasons are as follows:

- i)* The statement makes clear that there is not a man in The Gambia with whom M had an extra-marital affair. In my judgment the only possible relevant issue is the credibility of M which is a matter for me. The contents of the statement did not in my judgment introduce a further risk factor for the court to assess.
- ii)* By his choice, F has left the risk assessment to the professionals and the court. He did not attend to question the experts. I make no criticism of his choice, given he is not H's father and has important work commitments.

- iii)* Mr Donnelly made clear to me that while he was instructed to test the credibility of M, he could question her in a way which would not require him to reveal the contents of the statement.
  - iv)* Moreover, if I am wrong about relevance, I am satisfied that there is a likelihood of H suffering real harm if the statement is disclosed. I do not propose to provide a further explanation of why, because to do so would be tantamount to disclosing the statement itself.
  - v)* I was satisfied (and remain satisfied) that F's right to a fair trial of the issues he wishes to put before the court would not be (and in the event have not been) compromised by non-disclosure.
  - vi)* It is clear to me that, regardless of the direct risk to H, M has very valid and understandable reasons why she does not want the statement to be disclosed. While by itself this may not have been a sufficient factor to withhold disclosure, it does attract some weight in the balance I would have to strike, if I am wrong about the issue of relevance.
44. The one caveat I made, and continue to make, is that I will keep the question of disclosure firmly under review. Having now heard all of the evidence I see no reason to lift the embargo on disclosure.
45. However I accept Mr Donnelly's submission that there may come a time when H herself has to be told about the circumstances of her conception. At that time it may be important for F have sight of M's statement because it is in H's best interests for him to do so. All are agreed that now is not the time to tell H that F is not her father.

46. I can reassure F that nothing in the withheld statement should effect his view of H or is something he needs to know. I urge him to put it entirely out of his mind, for H's sake. I remind him what Mr Ekaney KC told me in his closing submissions: F can be very sure that M was not having an affair with another man or had an undisclosed partner in The Gambia.

FGM – the law

47. The courts of England and Wales have described FGM as:-

- i) “an evil practice internationally condemned and in clear violation of article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950... A repulsive practice... Deleterious to women's health.” (Auld LJ & Arden LJ (*Fornah v Secretary of State for the Home Department* [2005] EWCA Civ 680 [2005] 1 WLR 3773); when the same case reached the House of Lords [2007] 1 AC 412, Lord Bingham described the international and domestic consensus (paragraphs 8 and 26) while Baroness Hale observed that FGM “will almost inevitably amount either to torture or to other cruel, inhuman or degrading treatment within the meaning ... of Article 3”: at 94
- ii) A “barbarous” practice which is “beyond the pale” (Munby LJ in *Singh v Entrance Clearance Officer, New Delhi* [2004] EWCA Civ 1075, [2005] QB 608
- iii) “a gross abuse of human rights and a form of domestic violence which dehumanises people in which no cultural imperative can extenuate and no

*pretended recourse to religious belief can justify” (Munby P in Re B and G (children) (No. 2) [2015] EWFC 3 [ 2015] 1 FLR 905*

48. In *Re X (Female Genital Mutilation Protection Order. No. 2) [2019] EWHC 1990 (Fam)*, Cobb J at 14 described FGM as “*a generic term for a range of procedures which involve the partial or total remove of the external female genitalia for non-medical reasons.*” It is not necessary for me in this judgment to identify the 4 types of FGM which Cobb J then went on to categorise.
49. The *Female Genital Mutilation Act 2003* as amended makes provision under section 5A and Schedule 2 part 1 for the making of female genital mutilation orders.
50. The provisions for the “FGM protection orders” are provided within schedule 2 part 1 of the 2003 Act and are as follows:-

*“1 Power to make FGM protection order*

*(1) The court in England and Wales may make an order (an ‘FGM protection order’) for the purposes of–*

*(a) protecting a girl against the commission of a genital mutilation offence, or*

*(b) protecting a girl against whom any such offence has been committed.*

*(2) 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.*

*(3) An FGM protection 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.*

(4) *The terms of an FGM protection order may, in particular, relate to –*

(a) *conduct outside England and Wales as well as (or instead of) conduct within England and Wales;*

(b) *respondents who are, or may become, involved in other respects as well as (or instead of) respondents who commit or attempt to commit, or may commit or attempt to commit, a genital mutilation offence against a girl;*

(c) *other persons who are, or may become, involved in other respects as well as respondents of any kind.*

(5) *For the purposes of sub-paragraph (4) examples of involvement in other respects are –*

(a) *aiding, abetting, counselling, procuring, encouraging or assisting another person to commit, or attempt to commit, a genital mutilation offence against a girl;*

(b) *conspiring to commit, or to attempt to commit, such an offence.*

(6) *An FGM protection order may be made for a specified period or until varied or discharged (see paragraph 6).*

51. The court is therefore given a wide discretion to make orders for the protection of girls against FGM including restrictions on the ability of the girl's parents to take a child abroad. I must have regard to the need to secure the health safety and well-being of the girl concerned.



52. In the earlier appeal of *Re X* in which Cobb J was conducting a re-hearing, *Re X (A Child) (FGMPO) [2018] EWCA Civ 1825*, Moylan LJ made the following observations at paragraphs 31 and 32:

*“31. I would agree that, ..., the rights engaged by both Article 3 and Article 8 of the European Convention on Human Rights will clearly will be relevant to the exercise by the court of its powers to make an FGMPO. I would also agree that, when deciding how to exercise its powers, the court must balance a number of factors. The court will have to consider the degree of 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.*

*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.*

47. In *Re X (No 2)* Cobb J analysed risk by considering ‘macro’ and ‘micro’ factors:

*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?*
- 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?"*

53. As both the FGM issue and the question of H's contact with F concern the upbringing of H, her welfare will be the court's paramount consideration under s1(1) of the Children Act 1989, although as pointed out by Cobb J at §34 of *Re X (No.2)* this may be of secondary importance as orders made in under the 2003 Act will be intended and designed to protect and promote H's welfare.

54. I bear very much in mind what Cobb J says about the risk evaluation in the context of FGM at §106 of *Re X (No.2)*. Risks dynamic, highly sensitive to changes in circumstances and requires regular re-assessment and constant review of all relevant safeguards and protections.

55. There is no dispute that I should treat F as a father with parental responsibility: he remains registered as such on H's birth certificate. So in respect of his application for a child arrangements order, I must presume, unless the contrary is shown, that the involvement of each of her parents in H's life will further his welfare (s1(2A). "Involvement" includes both direct and indirect contact (s1(2B). I must have regard to each of the matters listed in the welfare check list (s1(3). These are:

a. The ascertainable wishes and feelings of H, considered in the light of her age and understanding

- b. H's physical, emotional and educational needs
  - c. The likely effect on her of any change in his circumstances
  - d. H's age, sex, background and any characteristics of his which the court considers relevant
  - e. Any harm which she has suffered or is at risk of suffering
  - f. How capable each of her parents is of meeting his needs
  - g. The range of powers available to me.
56. In considering whether to make any order for indirect contact I must not make any order unless I consider that doing so would be better for H than making no order at all (s1(5)).
57. There is no real dispute as to the legal principles I should apply.
58. I will consider the evidence I have read and heard, but I do not attempt to catalogue every piece of that evidence but rather set out the detail I consider relevant to the decisions I have to make before adopting the framework described by Cobb J as a tool to analysing the risk to H in this case of permitting her to travel to The Gambia.

*The expert evidence*

59. Professor Bradley provided a series of reports and replies to questions put to her by the parties, each one slightly updating the earlier one in response to more information becoming available. Her earlier reports deal mainly with the prevalence of FGM in The Gambia and other macro factors. Her later reports provide a more comprehensive

risk assessment taking into account Ms Komma's assessment of maternal family members in The Gambia and the support she can offer.

60. She reported high prevalence of FGM. 73% of women and girls between 15 and 49 are thought to have undergone FGM type 1 or 2 in 2019, a slight reduction from 2013. The prevalence rate in Gambian Region 1 where M's family live is 78% and one of the highest rates in The Gambia. Amongst the Maternal Ethnic Group, which is their ethnic group, prevalence is 98%. While most girls are cut below 5, 28% are cut between the age category 5-9, which is H's current age. Among Muslims the rate of FGM is 77% while among Christians it is 21%.
61. There are many reasons for the practice including respect of tradition and initiation of girls into cohesive but secretive networks with elder female members of the community. It is to some extent still a marker of sexual purity and a religious requirement. FGM is seen as a community issue rather than one to be made just by the mother (of father) alone.
62. Since 2015 the practice was outlawed by the passing of an amendment to the Women's Act making carrying out FGM a crime punishable by up to 14 years' imprisonment. While there have only been minor arrests, there have been attempts to educate police and immigration officers and various associations and groupings in civil society are committed to ending FGM. This has resulted in 97% of all FGM being performed by traditional practitioners rather than by medical professionals.
63. In her first report Professor Bradley unequivocally advised that the H was at high risk of undergoing FGM should she return to The Gambia. She recommended the mother underwent FGM awareness training. In an updated report she advised that an in-country expert was required to visit the maternal family and undertake a further risk

assessment. She considered that if that assessment concluded that the family had abandoned the practice of FGM, the risk to H could be deemed as low; if not, the risk was medium to high and H and M would need to be accompanied by a trained advocate during the visit.

64. I am very grateful to Professor Bradley for recommending Ms Komma as a suitable in-country expert. Ms Komma's report and replies to questions is full, comprehensive and clear. She was able to interview MA1, MGF and MGM, who are respectively H's maternal aunt, maternal grandfather and maternal grandmother. She provided a comprehensive record of her interviews with them. She also confirmed the information provided by Professor Bradley about the general practice and awareness of FGM in The Gambia, stressing that those who practice FGM is regarded it as part of their cultural identify, beliefs which control female sexuality and improve the marriage prospects. In her oral evidence she confirmed Professor Bradley's view that it also played of a role of initiation of girls into important cultural networks.

65. Her conclusion based on her interviews and her first-hand information on the ground regarding FGM is clearly stated:

*"I am of the opinion that the family in question have heard knowledge on the illegality of FGM, the health implications FGM has on women and girls and through their personal experiences, have decided to do away with the practice of FGM on girls. The risk of H undergoing the practice of FGM should she visit the Gambia with her mother is very low and minimal."*

66. She added that various civil society organisations could offer further protection and guidance to H and the mother should they visit The Gambia. She included an

organisation which she co-founded, The Girls Agenda, and gladly offered their services.

67. She was subsequently informed of the results of the paternity testing. She explained that she was not aware of any unidentified paternal family member who might increase the risk to H in The Gambia. She stressed that most issues of FGM are women-related and mostly from the mother's family. She repeated her assessment of the maternal family.

68. Professor Bradley then advised:

*"I recommended a report based on interviews with the maternal family. I am content with the conclusions of Ms Komma. I stand by my recommendation that in-country advocacy would be needed should H travel to the Gambia and I note Ms Komma and her organisation have offered this. My recommendation is based on the biological father (who seems unknown) but could be a Gambian national) not being involved in the upbringing of his daughter. If he were to become involved, the paternal views on FGM and the risks to H linked to these, would need to form part of a revised risk assessment.*

69. Professor Bradley advised, with detailed references from academic and research literature, that where there was history of FGM in a family, but it was now asserted that FGM was no longer observed in the family, this would have to be sustained for two generations before the risk of FGM was reduced.

70. Ms Komma confirmed in her oral evidence the monitoring and support which was set out in an email dated 23 January 2023. This included announced and unannounced



weekly visits to M, direct contact via phone calls and WhatsApp and bi-weekly sessions with the family on the complications and consequences of FGM.

*The maternal family*

71. I heard from three members of the maternal family from their home in the Gambia Town 1, near Gambia Town 2 and the city of Gambian Region 1 in the western region of The Gambia. They gave evidence in a local Gambian language through the excellent interpreter, Mr Ndiaye. He enabled each of the maternal family members to communicate effectively with the court. I intend no disrespect when referring to each of them by their forename
72. I first heard from MA1, H's maternal aunt. I found her an impressive and reassuring witness. I then heard from the maternal grandmother, MGM, followed by the paternal grandfather, MGF. While at times their evidence was a little confused (about the names of the girls in the family who had been subjected to FGM), they did not contradict MA1's evidence. I accept that they found giving evidence to me stressful.
73. All 3 witness confirmed what they had told Ms Komma about their abhorrence of FGM. Both MA1 and M (H's mother) had been cut at the insistence of their paternal grandmother who is now deceased. The grandparents each told me that they felt powerless to intervene: MGF told me that with both his baby daughters he was at work and only found out after it had happened on his return. MGM told me subjecting her daughters to FGM was the biggest mistake of her life.
74. MA explained that she insisted on her daughters being cut because of the enormous pain she had suffered from giving birth. I found this aspect of her evidence compelling and credible. She told me that nobody (including her husband or members

of her paternal family) had suggested her daughters should be cut and that none of her friends have had their children subjected to FGM. She confirmed she had done some anti-FGM training online. She told me that she spent most of her time at the compound.

75. Relying mainly on MA1's evidence and on a family tree provided by M's legal team. I am satisfied on the evidence I have read or heard that the position is as follows. MGF and MGM had 5 daughters and one son (MU). The older 4 daughters, MA1, MA2 (aka MA2), MA3 (aka MA3) and M were all subjected to FGM. MA4, the youngest daughter, has not been cut, but I have not been told the reasons why not. MA1 lives with her 4 children in a separate two bedroom property in the family compound. MGM and MGF lived in a separate 6-bedroom property. None of MA1's daughters, MC1 (12), MC2 (7) and (MC3) have been cut. MA2 and her husband live separately from the family. They have one daughter, MC4 (aka MC4) was subjected to FGM as a baby at the insistence, I was told of her paternal grandmother. MA3 lives in the family compound with her son and daughter, MC5 (19). MC5 was subjected to FGM as a baby also at the insistence of her paternal grandmother. Both MA1's and MA3's husbands work and live abroad but travel back to visit their families in The Gambia.
76. I have no corroborative evidence of what I am told about which girls in the family have or have not been cut. Equally I have received no credible evidence to contradict what is asserted: no party before me has challenged this account. The account I was given was consistent with their written statements, what M has written (and then told me) and with what is reported by Ms Komma in her interviews with the family members. I remain a little troubled that the same reason is given for why all the girls

subjected to FGM in M's and H's generation were cut: it was the insistence of the paternal grandmother. I heard little evidence that any female family member had confronted the person who had caused girls in the family being cut; but when I probed, I was told that the paternal grandmothers were either dead or had no contact with the family. MGF told me that he told his mother that she had done a bad thing but that he had forgiven her.

77. All family members confirmed that all of the protective measures being put forward on M's behalf would be accepted. They would not only comply with all of the rules but would report any family member who contravened them. All family members stated, with passion, how much they loved H, how much they wanted to see her and M, how much they missed her and how they would protect her and ensure she was not subjected to FGM. I wonder whether the paternal grandmothers who it is said were responsible for the historic FGM would also say they loved their grandchildren and were doing the best for them by having them cut.

E

78. I heard next from F. I have absolutely no doubt that he deeply loves H and will treat her as if she were his daughter. He told me the paternity results would make no difference. It was obvious to me that they have deeply upset him. He told me that his recent remote contact had gone extremely well. He had spent 30 minutes on a video call on 17 December 2022, 1 hour on 23 December and 1 hour on 20 January 2023. H was her normal happy self.
79. He accepted that H should not be told anything about her paternity for the time being. He told me that she should not be told until she is a young adult but he accepted that he would abide by the recommendations of the experts on this issue.

80. F told me that he is working as a hodcarrier and lives alone. He appeared anxious that his statements contained multiple spelling and grammatical mistakes. I reassured him that while his statements were plainly not written by a lawyer, I had fully understood what he was communicating.
81. He told me that he saw no way of repairing his relationship with his older daughters PHS2 and PHS3. I hope he can find a way. His youngest daughter, PHS1 is currently in England but is very keen to return to Thailand. She does know about the paternity results but he has told her not to tell anyone about it. He knew PHS2 and PHS3 loved H and treated as her sister. He accepted that H stayed regularly round at PHS2's and that PHS2 was a great support to both H and M. I could detect no bitterness or even jealousy in his replies.
82. He told some detail about how his relationship with M started, which as it was not challenged, I have set out above. He spoke with genuine affection about how beautiful M was in her red dress when he first saw her in person. He told me he was 'head over heels in love'. He met her family during his time in The Gambia and nothing he noticed or heard gave him any cause for concern about them. He only found out about M's FGM on their wedding night. Having seen the pain and suffering, she endured during child birth, he has no doubt that she would not want H to go through the same pain and suffering. He told me that having learnt about FGM, he was dead against it.
83. His main concern was that H's father was in The Gambia and he would, using Sharia law, take over custody of H, retain her in The Gambia and then subject her to FGM. He accepted that if she could, M would return to England which was her home and where she had a brilliant life. She had nothing in The Gambia.

84. Speaking about the future, he saw no reason why his time with H had to be supervised or why there had been any video sessions, given that he has had 3 successful and happy contact sessions with her by video. They have a great relationship and there was no way he was going to harm her. He would not tell her that he was not her father. He thought he was being punished for what had found against him which he found very unfair because he had never raped M or abused her in the way found by HHJ Smith. He thought M should be responsible for handovers because H knew her and she was her mother.
85. His position moved during cross examination from Mr Donnelly. He accepted there were difficulties with the potential supervisors/monitors he had put forward and reluctantly accepted that MU would be more suitable, given he lived in the same house as H and had impressed the guardian with his good sense and maturity. He wouldn't mind him remaining with them for a few minutes to reassure M but questioned how the arrangements would work in practice. He suggested he and MU should swap contact details and put forward a venue near UK City (where he lives) for handovers. He did not object to contact remaining in the community (as opposed to being in his home) but understood the plan was it to be reviewed by me in the future.

M

86. My impression of M was always going to be a key ingredient of my risk assessment.
87. Consistent with her witness statements she insisted that she would never subject H to FGM. Her reason was the extreme pain and suffering she had suffered in child birth. She movingly told me that she had been the victim of FGM and she was not going to put her daughter through something which had impacted on her all of her life. She

accepted all of the recommendations of Ms Komma and of the guardian. She understood the nature of undertakings and would keep to her promises. She would fully co-operate with whatever safeguards I considered necessary to protect H. She said that if she became worried that someone was trying to take H away or have her cut, she would not call the police but Ms Komma.

88. She told me that H was British and she herself was now British. They live in this country where H will have a better education than she ever had in The Gambia. She has a better life here than in The Gambia. She told me no-one was going to take her away in The Gambia. There was no-one in The Gambia who might be H's father who is going to take her away. She is not in contact with H's father in The Gambia.
89. She told me that she had truly believed F to be H's father and was shocked by the first paternity test. She thought it was a mistake. Even with the second test, she was confused and doubted herself. She denied knowing H's biological father or being in contact with him. She explained that under Islamic law F had paid her father's older brother a dowry. She denied that she had paid this money to H's father.
90. She explained that she hadn't told her maternal family about the paternity tests – this included MU. When the reasons for this was explored she became so distressed that she needed a break from her evidence. I can well understand the complex cultural reasons for this distress. She told me that if the family knew that H had been born out of wedlock, they might see H differently. She thought that in some way it might even increase the risk of her being cut. but the issue for me is whether all of this impacts on my risk assessment of FGM.
91. She did tell me that she was desperate to see her family again having not visited them since 2016, initially because of lack of money but then because of the court order. She

told me she now had sufficient funds from her savings. She said she would like to visit her family every year for up to three weeks.

92. She told me about the support that PHS2 and PHS3 gave her. She had discussed the paternity results with them but they were adamant that it would make no difference to them. They had agreed not to tell H anything about her paternity. She explained that PHS2 had a boyfriend who was also from The Gambia. They were planning to visit his family there at the same time that H would be in The Gambia and they all hoped to meet up. She explained that PHS2's boyfriend would not present any risk to H because he was not part of the family and had no right to her. PHS2 hadn't told him about H's paternity. I accept her evidence on this issue.
93. M agrees that H should not be told yet, and would welcome professional guidance as to how and when this should happen.
94. In cross examination by Mr Donnelly M revealed that she had a boyfriend. She had met him in the UK in 2020 and had been his girlfriend for around 2 years. She has introduced him to H about 2 years ago. She calls him by his name not dad. He was born in The Gambia but has Portuguese citizenship. He now lives in England. She denied he was H's father. She said she had discussed FGM with him and he was against it. She explained that he came from a different tribal group and spoke a different language: he is Ethnic Group 2 whereas she is Maternal Ethnic Group. She told me his tribe did not do FGM which was at variance with Professor Bradley's evidence . While she told me that she hoped that their relationship would develop, even to marriage, she also told me that she hadn't told him about H's paternity because it was private and she didn't want him to discuss H with him. She told me that she was not intending to travel to The Gambia with him.

95. M accepted that H and F know each other but she was clearly anxious about contact. She wanted more video calls first and wanted someone to be there to supervise. When pressed, she expressed concern that he may say something negative about herself and she wanted reassurance. She accepted that F was not going to harm H. She then moved her position to accepting that MU should not supervise the entire visit but should be present for up to 10 minutes to make sure H was settled.
96. I was generally impressed with M's evidence. I have no doubt she loves H and wants to protect her from the harm she suffered as a baby which caused such pain at childbirth. I accept she genuinely wants to visit her family in The Gambia and is intelligent enough to know that she will have to agree with whatever protective measures are put forward by the professionals and the court. I accept she is likely to return home to England if not prevented from doing so. Given the findings made by Her Honour Judge Smith, I understand her misgivings about allowing unrestricted contact to F and wishes to have nothing to do with him.
97. I continued to harbour lingering doubts about the impact of H's paternity tests and the potential risk. This was heightened by the late disclosure of a boyfriend who hailed from The Gambia. I will have to consider whether I can accept that M is being truthful about the complete absence of any male in Gambia who as a father may present a risk to H both of FGM or retention pursuant to local law.

The Guardian

98. In her final analysis described H as a "*very happy little girl of seven years of age. She is articulate, bright and confident, she knows her own mind and for her age can clearly express how she feels and why*". In oral evidence she described H as delightful



and a true credit to her mother. She had no concerns in respect of the care given to her by M.

99. In her final analysis she recommended on balance that the travel ban be lifted to allow one visit to The Gambia subject to being “extremely concerned” as to the position (then) of uncertainty regarding paternity. She recommended that H should spend time consistently with F, being content with M’s ‘stepped contact plan’ with supervision by MU or, PHS1 in the alternative.
100. In her oral evidence and having considered all of the oral evidence and the new material about paternity, she continued to recommend that the proposed trip should take place, subject to all of the available safety measures discussed by the experts and others suggested by me during the course of the hearing.
101. She told me that having considered the issue of contact further, she did not see the need for contact to be supervised but only for the handovers to be supported, but definitely not by M. She considered MU to be entirely appropriate for this task, having met and assessed him. She emphasised that it was important to “*take M along with us. Both H and her have got to feel comfortable*”. She acknowledged that M had moved her position considerably. She reassured F that he was not to blame for the impasse over contact which between early 2022 and its re-introduction in December 2022.
102. She recommended that both parents considered using a parenting App which would be useful for communication but to preserve each other’s privacy and reassure M in the light of the domestic abuse.

103. She confirmed that she sought expert advice on how and when to explain to H her true biological paternity.

Analysis and conclusions

104. The risk assessment in FGM cases is particularly difficult often because of the lack of a clear factual foundation. By definition, there has been no FGM caused to the subject girl. Sometimes there is clear evidence that the parents or other close family members have inflicted FGM on a sibling. This is not this case, nor the case of *Re X (No. 2)*. This mother has done absolutely nothing wrong and has not harmed H in any way connected with FGM.

105. I turn to the macro-factors identified by Cobb J.

The prevalence of FGM in The Gambia is high. There is pressure brought to bear particularly by senior women in the community for babies and young girls to be cut as part of their cultural identity and as part of the initiation into the community. It is high in Gambian Region 1. FGM has been illegal since 2015 with a punishment of up to 3 years for anyone engaging in FGM. There are some encouraging signs that police and immigration officers are being educated about FGM and a network of civil societies has grown up, including The Girls Agenda, the organisation headed by Ms Komma. I have also seen an email from Gamcotrap an advocacy group determined to eliminate FGM in The Gambia ran by Dr Isato Touray, a former vice-president of The Gambia which sets out the progress already made. In her evidence, Ms Komma commended Gamcotrap and Dr Touray as part of the general support network available to M. There is no extradition treaty between The Gambia and the UK. Plainly if H was cut and M returned to the UK she could face prosecution in this jurisdiction; but if she didn't return, or was prevented from returning, there is unlikely to be any sanction in

this jurisdiction. The formal safeguards may not be particularly strong – I note M’s reluctance to inform the police. However there are Ms Komma and civil agencies in the Gambia and, in this country, the children’s guardian (assuming I don’t end the proceedings prior to the visit). Most girls in the Gambia, including those in H’s family, were cut as babies up to 12 months old. 28% are cut in H’s current age range. In conclusion I consider the macro factors point to a risk which can be classified as medium to high and I note Professor Bradley agrees with this assessment.

106. I turn now to the micro factors. In my judgment the need to avoid over-generalisation and even ethnic-stereotyping requires greater weight to be given in this case to these micro factors.
107. I have no reason not to accept the family’s account of who has and who has not been subjected to FGM in the maternal family. The mother and her elder sisters were cut as babies. Two of H’s first cousins were also cut as babies; but three other first cousins were not. Both M and MA1 described the pain and suffering they experienced at giving birth and now fully appreciate this was caused by being cut as babies. They both strongly assert that they will not see their own daughters cut. I accept their evidence in this respect. I heed Professor Bradley’s warning that two generations of non-cutting is required before there can be confidence that the family has been abandoned. I am not convinced that the grandparents could have done nothing to prevent their own daughters being subjected to FGM at the behest of MGF’s own mother and I remain sceptical about their explanation/excuses. However I accept that that was a generation ago and even over one generation customs move on. The evidence suggests that FGM within this family is determined by grandmothers or women, rather than men. That chimes with the general practice of FGM in The

Gambia. Most significantly, the important women in the family, H's grandmother and eldest aunt have expressed strong opinions about FGM. Both MA1 and M have undergone FGM awareness courses. Whatever their position regarding their own children, I accept that the grandparents may have moved on in their thinking. If I am wrong about that, I accept that a combined axis of MA1 or M, together with the other safeguards including the involvement of Ms Komma, should be sufficient to protect H within the family environment. Unlike her aunts and cousins, H is a British citizen, lives in Britain and has been the subject of intensive and long court proceedings. I accept and commend M and the family for fully co-operating with all the suggestions made by the experts, the guardian and the court. They have accepted all of the safeguards that have been suggested. They are all necessary to protect H and I will set them all out at the end of this judgment. They are all robust, realistic, workable and necessary.

108. There is no doubting that M is a loving and caring mother. She has demonstrated her capacity to produce a delightful and well-brought up girl. Her attitude to contact shows how committed she is to protect H. The professionals do not have a bad word to say about her parenting. I have commented about the potential for FGM abusers to love their victims, but I find it difficult to equate M's love and devotion for H with an undisclosed intention to subject her to FGM.

109. The specific feature of this case which has caused me greatest concern is that of paternity. F is not the biological father of H. Could M be lying about the existence of someone who she knows is the father and who is in The Gambia? Could it be that her 'new' boyfriend is in fact the father of H which is why she is with him now? A DNA test of the new boyfriend would quickly resolve this question, but he is not going to

accompany H on the proposed trip. He is not aware of any issue arising about H's paternity. No party has seriously doubted M's account and after considerable reflection I too am prepared accept her evidence on this issue. I should emphasise that my concern is because of the risk of H suffering torture or inhuman or degrading treatment or punishment which would violate her Art 3 rights and cause her lifelong pain, suffering and anguish if I am wrong

110. I also weigh in my risk assessment H's need and right under Art 8 to meet her maternal family and to know the country which plays a significant part in forming her cultural identity. I expect the trip will also be a lot of fun for her as she will no doubt be the centre of much love and attention from her grandparents, aunts and cousins. I remind myself that this type of factor can never outweigh an unmanageable risk of Art 3 harm to a child.

111. I will therefore

*i)* vary the terms of the worldwide travel ban to permit H to leave England and Wales for a single trip between 29 March 2023 and 16 April 2023 on condition that she travels with M but no other person.

*ii)* I will declare that H is

a) habitually resident in England and Wales;

b) a British citizen and not a national of The Gambia, and

c) a passport holder of the UK not The Gambia.

*iii)* I will order M to return with H to England and Wales no later than 23.59 on 16 April 2023.

- iv)* I will continue the other FGM protection orders in their entirety. I will adjourn the application to a date to be fixed after H's return to his jurisdiction.
- v)* I will direct the Children's Guardian to meet in person with H within a reasonable time following her return from The Gambia.
- vi)* I will direct M's solicitors to notify the appropriate British Consulate in The Gambia of H's visit as soon as practical.
- vii)* I will order M to make H available for video contact with F when she is in The Gambia for up to 1 hour on 31 March and 14 April or on other days as may be agreed and at times which shall be agreed prior to H leaving England.

112. The order will be subject to the following conditions

- i)* The undertakings set out below are to be put in writing signed by M, personally given to me, filed in court no later than 17 February 2023 and complied with by her in full.
- ii)* M shall provide to the other parties and to the Court an emergency number for the local Police.
- iii)* The full details of the trip will be shared with Ms Matida Komma of the Girls' Agenda.
- iv)* The mother will contact an English speaking lawyer in Gambia Region so that contact has been establishing with a lawyer before the trip begins.
- v)* During the trip, H and M shall reside at the family compound at Location, Gambia Town 1 Gambia Town 2, The Gambia and shall not reside anywhere

else.

- vi)* H shall not be permitted to have any unsupervised contact with anyone outside the maternal family.
- vii)* No person outside the maternal family shall sleep in the accommodation in which M and H are residing and must leave that address in any event by 8.30pm in the evening.
- viii)* M shall deliver up H's passport to her solicitor no later than 48 hours after her return to the UK.

113. The undertakings which I will accept from M are as follows:

- i)* No later than 14 days before the departure from the United Kingdom, she shall provide all her travel details, including flight times, flight numbers, departure times, arrival times, any email address available in The Gambia and the telephone numbers of her parents, her sister Miss MA1 and her own numbers, to the Children's Guardian and to Ms Komma.
- ii)* To provide confirmation to her solicitor from the Girls' Agenda of:
  - a) their willingness to meet with her and H upon their arrival in The Gambia at the specified date and time; and
  - b) if it is not practical their confirmation that they shall meet with H and M no later than 12 hours following their arrival in the Gambia.
- iii)* Not to force, attempt to force or otherwise instruct or encourage or permit any person to carry out female genital mutilation/female circumcision on H.

- iv)* Not to instruct or otherwise encourage H to undergo any form of female genital mutilation/female circumcision.
- v)* To take all necessary steps to prevent H from being subject to female genital mutilation/female circumcision from any other person
- vi)* Not to take H out of the jurisdiction of England and Wales save for the purposes of the trip to the Gambia from 29 March 2023 to 16 April 2023.
- vii)* Not to be accompanied by her boyfriend on the flight out to Gambia or at any time during her visit.
- viii)* To ensure that she and H shall reside throughout their visit to The Gambia with the maternal grandparents at their family home in Location, Gambia Town 1 Gambia Town 2, The Gambia.
- ix)* To ensure that she and H will sleep in the same bedroom for the duration of the proposed trip
- x)* To ensure that H will be in her presence (within eyeshot and/or hearing shot) throughout the trip and to take all necessary steps to ensure that H will not be removed from her presence at all during the trip.
- xi)* To comply with all the arrangements proposed or facilitated by The Girls' Agenda team, to include but not be limited to:
  - a)* weekly visits to the family to check on their stay and any other risks that they might notice from anyone regarding the protection of H against FGM,



- b) direct contact with her by telephone calls or WhatsApp in which she will give them information regarding H's safety and wellbeing
  - c) and, bi-weekly sessions with her and the maternal family on complications and consequences of FGM on the girl child and the laws that protect the child in the Gambia against FGM.
- 
- xii)* To cooperate with any further measure that The Girls' Agenda team consider to be appropriate for H's protection.
  - xiii)* To keep the workers at The Girls' Agenda team informed of the progress of the trip at least every 48 hours by text or WhatsApp.
  - xiv)* To return H to the jurisdiction of the court at the end of the trip.
  - xv)* To immediately notify the Children's Guardian and her own solicitors by email when she arrives back in the UK.
  - xvi)* To make H available for any safeguarding visit by the Children's Guardian or any other agency upon her return from the proposed authorised trip.
  - xvii)* To have a working mobile phone, charger and plug adapter with her at all times when she is on the trip and will have saved on the telephone the numbers for The Girls' Agenda, the local police and British Consulate assistance.
  - xviii)* To use British passports for herself and H on departing and entering the UK and the Gambia.
  - xix)* Not to apply for any passport or travel document from The Gambia for herself or for H.

114. I will not make directions to this effect but I would be grateful if the solicitors for the child would kindly inform F by a short email both of H's safe arrival in The Gambia and arrival back in England.
115. I have considered directing M's boyfriend to undergo DNA tests but this has not been the subject of any submissions and given he is not going to accompany H on this trip, I have concluded it is not a necessary reassurance. If, as M hopes, the relationship blossoms, it may become appropriate for him to be assessed as to his attitude to FGM and if necessary for paternity tests undertaken. That is for another time.
116. I have considered whether I should direct that on her return to England, I should require M to submit H for a paediatric test. However no-one has sought this and I have concluded that it would be an unnecessary and disproportionate intrusion on H without better cause. No doubt if the children's guardian has any concerns on her post-trip meeting with H she will alert the court appropriately.
117. In respect of H's contact with F the issues are comparatively narrow. I consider it necessary to make an order in H's best interests. Contact has for whatever reason, not happened in the past and it is wholly contrary to her best interests for it to break down yet again. I will keep judicial oversight until the next hearing. M shall make H available for one further video contact with F. She shall make H available for a visit over the weekend of 10<sup>th</sup>/11<sup>th</sup> February 2023 for 2 hours at a time to be agreed and thereafter every fortnight at a time to be agreed for up to 4 hours. MU shall on behalf of M be present during handovers and may remain for up to 5 minutes to ensure H has happily passed into F's care. I do not envisage MU going anywhere with F but he may, for example, see her safely fastened into F's car or see them walking away. I expect F to behave appropriately to ensure H is not exposed to any disagreement

between MU and himself. F is not to take H to his home or any other person's private residence. He is not to be accompanied by any other person during contact. I will review these arrangements and restrictions at the next hearing. If for any reason MU is not available for the handovers, M shall arrange for another person to facilitate contact. It could be PHS' mother, the ex-partner of F, if no other suitable person can be identified. It will be extremely damaging to H if contact is missed, particularly if it is simply because the adults cannot agree who should manage the handover. There is nothing preventing F providing suitable age-appropriate parenting presents. I direct him not to discuss the historic breakdowns of his contact or to make any criticism of M in front of H. All handovers are to be at Location 2 unless written agreement is reached at least 24 hours before of any different handover venue. I expect both parties to make use of a suitable parenting app to be able to communicate with each other as recommended by the guardian. I expect MU and F to exchange contact details. I was told that this was agreed.

118. I will by consent make an order against both M and F restraining them by themselves or by encouraging or instructing others from informing H that F is not her father. I will also require them to tell anyone who they have told or may tell in the future to ask them not to tell H because the court considers it would be extremely emotional harmful to her to be told by them.

119. A date should be fixed after H's safe return to England for a further hearing.

120. That concludes my judgment.