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Neutral Citation Number: [2020] EWHC 2048 (Fam)

Case No: FD19F07012

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/07/2020

Before :

MRS JUSTICE LIEVEN

- -

Between :

AB

Applicant

and

AN

First Respondent

and

BN

Second Respondent

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Intervenor

- -
- -

Dr Charlotte Proudman (instructed by **Duncan Lewis**) for the **Applicant**
The **First Respondent** did not attend and was **unrepresented**
The **Second Respondent** did not attend and was **unrepresented**
Mr Rob Harland (instructed by the **Government Legal Department**) for the **Intervenor**

Hearing dates: **10 July 2020**

- -

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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MRS JUSTICE LIEVEN

Mrs Justice Lieven DBE :

1. This case concerns an application by the Applicant for a Female Genital Mutilation Protection Order (the FGMPO) against her husband, the First Respondent, and the paternal grandmother, the Second Respondent. The application is for an order that the Respondents do not remove the child, EO, from the UK and they do not perform FGM on EO.

2. The Applicant was represented before me by Dr Proudman and the Intervenor, the Secretary of State for the Home Department, by Mr Harland. The First and Second Respondents are in Nigeria and have taken no part in this litigation having declined to attend the hearing remotely or file evidence.

3. The applications made by Dr Proudman at this hearing are that either I should grant the FGMPO now without hearing and assessing the evidence of the Applicant and without findings being made; or I should appoint a Children's Guardian and appoint three experts; an expert on FGM in Nigeria, an independent social worker and a psychiatrist to assess the Applicant. Dr Proudman also argues that the SSHD has no continuing role in this case and therefore should not be allowed to continue to intervene.

4. Given that the interface between the Family Court's powers to grant FGMPOs and the immigration system has become a complex one with a number of recent cases, and that I am not going to accede to Dr Proudman's applications, I reserved judgment.

Factual Background

5. The Applicant and the other members of the family are all from Nigeria. The Applicant arrived in the UK on 7 November 2017 on a visit visa valid for 2 years. She gave birth to a son on 17 January 2018 and applied for asylum the following day. Her application was refused on 9 August 2018 and she appealed to the First Tier Tribunal (FTT). Her asylum application was principally based on an alleged fear that she would be at risk in Nigeria because she had had an affair and her husband (the First Respondent) would refuse to accept her back and her mother-in-law (the Second Respondent) would harm her if she returned. The FTT rejected her appeal, in part because her husband had applied with her for a visa when she was pregnant. There were a number of adverse credibility findings made against her. On 17 January 2019 the Applicant again applied for asylum and this was again refused.

6. In July 2019 the First Respondent travelled to the UK with the couple's two older children, including EO, and left them with the Applicant. In August 2019 the Applicant made further representations to the SSHD which were refused on 22 January 2020 on the basis that the documents produced by the Applicant were not believed. The Applicant could have challenged that refusal by way of judicial review but did not do so.

7. On 31 October 2019 she made the application for an FGMPO in respect of risk to EO. The matter first came before me in the urgent applications list on 19 November when Dr Proudman asked me to make an FGMPO on an urgent ex parte basis. I declined to do so because, in my view, there was no risk to EO at that time, she being in the UK and the Respondents both being in Nigeria, with no reason to believe that they would

come to the UK and try to forcibly remove her from her Mother. I ordered that the SSHD be served and various immigration decisions be produced to me.

8. The Applicant has filed two witness statements in this matter. In the first statement she explains that she was subject to FGM when she was 5 years old. She says that her sister died as a result of FGM. She sets out the relationship with her husband's family and that the Second Respondent is strongly in favour of FGM. She says that when her husband came to the UK and gave her the two children he also gave her two letters from his family asking him to return EO to them so that she could be circumcised. Her husband told her he was not comfortable with EO being circumcised and thought that the children would be safe with her. She said that she did not trust her husband in this regard and he might change his mind if EO was returned to Nigeria.

9. The first letter from the husband's family states;

> *"Dear [AN],*
>
> *I am directed by the head of the family to formally write to you to present your daughter [EO] for circumcision in line with the culture and tradition of the family of [X] land. Despite series of calls and efforts by your Mother to [unclear] her for this crucial genital mutilation of which you know the importance and the consequence of not performing it to our family, you turned a deaf ear.*
>
> *This letter serves as a formal reminder to present [EO] on/before July 21 2019. Otherwise the family is left with no option than to come and take her*
>
> *Yours sincerely*
>
> *for the family"*

10. At the hearing of 19 November I ordered that the Applicant serve a further witness statement explaining the genesis of this letter. In her second statement the Applicant explained that the writer of the letter is a paternal aunt. The Applicant said she had had no contact with the paternal family since she left Nigeria. She said she could not be sure that her husband would stand by her and protect EO if they returned to Nigeria.

11. On 8 January 2020 the paternal aunt sent an email on behalf of the family saying that they did not intend to become embroiled in the proceedings and were unable to attend by video link due to lack of infrastructure. She then said;

> *"At this point, against our family tradition and wish, [EO] had been taken away from our reach and she is now in the UK. We cannot oppose or consent to the British court to act in accordance with their laws. Unfortunately, we will not be able to attend the court proceeds even via video-link due to lack of infrastructure. So we hereby leave all the decisions to the court."*

12. For the purposes of the applications before me today, and the asserted risk of FGM to EO, it is important to note that these statements do not explain how the Respondents could find the Applicant and EO in the UK or in Nigeria. The Applicant explains how she is strongly opposed to FGM and says that she would never allow her daughter to go through it. Further, she says that when she was living with her husband's family she arranged for EO to be removed from that family and placed with her family who were opposed to FGM.

13. The Applicant's solicitors wrote to the London Borough of Havering to ask whether they intended to become involved in the proceedings. Havering responded saying that they had made efforts to speak to the Applicant but had failed and they intended to take no part in the proceedings. The Applicant says that Havering have not contacted her. The Applicant had apparently initially approached the London Borough of Redbridge, where she at that time lived, and the specialist FGM social worker had advised her to seek an FGMPO. That social worker is no longer working for Redbridge and that authority have taken no further steps.

The case law

14. The interrelationship between the FGMPO regime and that of immigration control has recently become a legally complex one, with a number of cases. In ***SSHD v Suffolk County Council*** [2020] EWCA Civ 731 the Court of Appeal upheld the decision of the President of the Family Division in ***Re A (A child): Female Genital Mutilation: Asylum*** (Rev 1) [2019] EWHC 2475 (Fam). The ratio of the case is that the court on an application for a FGMPO is not bound by, or required to take as its starting point, any decision of the FTT in respect of the alleged facts or risk assessment conducted by the FTT. Equally, the Family Court cannot bind the SSHD not to remove a person from the UK by making a FGMPO, ***Re A*** at [15].

15. What appears very clearly from both the decision of the President and the Court of Appeal is that the two statutory schemes are separate and are focused on different things, albeit there will in some cases be a considerable overlap in the factual scenario being raised. At [40] the Court of Appeal said;

> *40. The challenge of the Secretary of State on this question, with respect, misses the point. Even if the evidence presented to the court and the tribunal is the same (at least on the FGM issue) and even if on that issue their different methods of risk evaluation might benefit the appellant (about which we express no concluded opinion), the context and nature of the decision-making process is materially different. A child or young person in proceedings in the family court for a FGM protection order will be separately represented. She will have her own voice. That is not the case in the tribunal in a case like this where a young person is not making her own asylum application but, like A, is the dependent of an adult who is. As we have remarked, whether a person's interests are a primary or paramount consideration can and sometimes does lead to a different decision on the same facts. Furthermore, the assessments of risk being conducted are different. That is not a question of proportionality, but rather is a reflection of the different focus and function of the statutory schemes.*

> *41. Furthermore, in so far as it was suggested that the President failed to have regard to the argument we summarise above, that is difficult to accept given the reliance the President placed on the decision of Black LJ in Re H at the core of his reasoning. To recollect, Black LJ identified the establishment of risk in a family case as a two stage process, the first of which involves the court finding facts on the balance of probabilities before it evaluates risk, whereas an immigration and asylum tribunal considers humanitarian protection claims, inter alia, on the basis of a reasonable degree of likelihood of serious harm. We do not consider that the Secretary of State has established that the differences between these two methods of evaluation supports her appeal*
>
> *42. As we indicated at the beginning of this judgment, Mr McKendrick appropriately limited in his oral submissions the challenge that the Secretary of State makes to the President's decision. In the discussion with counsel of the mischief that the Secretary of State sought to provide for, the relevance of part 25 of the Family Procedure Rules in the context of the family court's statutory function described in paragraph 2 of schedule 2 of the FGMA 2003, was explored. This provides a sufficient answer to the problem that it is said may arise.*
>
> *43. When a family court comes to consider an issue upon which it is said a tribunal has already opined, including, for example, a tribunal's specialist view about third country risk, the relevance of the tribunal's conclusion, any intermediate findings of fact, and the nature and extent of the evidence upon which these are based will be examined as part of all the circumstances in accordance with paragraph 2 of schedule 2 of the FGMA 2003. Whether further evidence is required by the family court to undertake its separate function in respect of a FGM protection order will depend on the application of the test in rule 25.4(3) FPR which is whether the expert evidence is necessary to assist the court to resolve the proceedings. There is no need to add any gloss to that test. The application of the Rules in the context of the legislation already provides a solution to any asserted tendency not to have regard to what other courts or tribunals may have said on what may be a related issue.*

16. It is important to also note the President's judgment 2019 EWHC 2475, and in particular:

> *55. Turning to the second issue, namely the role of the family court in assessing risk in FGMA proceedings where the risk has previously been assessed by the FTT, I am unable to accept the Secretary of State's submission that an FTT assessment must be the 'starting point' or default position for the court and that the court should only deviate from the FTT assessment if there is good reason to do so.*
>
> *56.The Secretary of State's submission is not supported by any authority. In fact, as the helpful observations from Black LJ (as she then was) in Re H (see paragraph 32 above) demonstrate, the approach to risk assessment in a family case is a different exercise from that undertaken in the context of immigration and asylum. The family court has a duty by*

> *FGMA 2003, Schedule 2, paragraph 1(2) to 'have regard to all the circumstances' and, to discharge that duty, the court must consider all the relevant available evidence before deciding any facts on the balance of probability and then moving on to assess the risk and the need for an FGM protection order. Although the family court will necessarily take note of any FTT risk assessment, the exercise undertaken by a FTT is not a compatible process with that required in the family court. It is not therefore possible for an FTT assessment to be taken as the starting point or default position in the family court. The family court has a duty to form its own assessment, unencumbered by having to afford priority or precedence to the outcome of a similarly labelled, but materially different, process in the immigration jurisdiction.*

17. Newton J considered the same factual case in ***Re A*** (FGMPOA) 2020 EWHC 323 and made findings that the child was at high risk of FGM and made the order sought and an independent social work assessment of risk of FGM. Newton J considered expert evidence including a legal expert on Bahraini law, an anthropologist on risk of FGM in Sudan, and a psychiatric assessment of the Mother. Dr Proudman urges the same approach to expert evidence in this case.

18. Dr Proudman also relies on the decision of Cobb J in ***Re X (FGMPO)*** [2019] 4 WLR 144. That was the reconsideration of a case concerning an application for a worldwide travel ban on the mother taking the child to visit the Egyptian father. The application had been brought by the local authority which was concerned as to the risk of the mother taking the child to Egypt and the child then being subject to FGM. An expert on the risk of FGM in Egypt had been appointed and Cobb J carried out a detailed investigation of the risk both in terms of Egypt generally and the family in particular which he described as the macro and micro factors, see [91] onwards. There are at least two important distinctions between ***Re X*** and the present case. Firstly, the local authority was the applicant for the order having become very concerned about the risk to the child. Secondly, the judge (originally Russell J and then Cobb J) heard evidence from the father and the nature of the risk was that the mother was travelling to Egypt to see the father and his family who were considered to create the risk. It was not clear the degree to which the mother could, or would, seek to protect the child from the risk if she was in Egypt.

19. The first matter I have to determine in this judgment is whether I should simply proceed to grant a FGMPO without hearing the evidence of the mother. In my view this would not be an appropriate course. There will be cases under the Female Genital Mutilation Act 2003 where the nature of the risk is sufficiently clear that it is appropriate to make an order on the written evidence alone, but that will be a matter for the judge taking into account factors such as the imminence of the risk. However, in this case there is virtually no risk whilst EO remains in the UK and in the Applicant's care. The Respondents are in Nigeria with no evidence they intend to come to the UK. If they did come to the UK there is virtually no risk that they would be able to take EO back to Nigeria without the Applicant stopping them. Further, the assessment of the risk of FGM here turns very largely if not wholly on the Applicant's evidence as to the likely conduct of the Father's family and her ability to protect EO. In those circumstances it appears to me to be wholly inappropriate to grant an

FGMPO without hearing oral evidence from the Applicant and the court being able to test that evidence.

20. I note Dr Proudman's argument that there is no harm in granting such an order and it would merely serve to protect EO if she returns to Nigeria because it could be lodged with the Nigerian court. However, firstly, in my view, it would be wrong to grant an order such as this without the court being satisfied that there is some risk. Cobb J in *Re X* at paras 28 onwards has set out the law in a comprehensive and thorough way and I will not repeat that analysis. What emerges is that the Court must *"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 [28] and the reference to the ECHR law referred to therein. Therefore, if the evidence does not reach a threshold of showing *"a real risk"* then an order should not be granted. Dr Proudman points out that Cobb J also referred in that case to the fact that even if the risk was relatively modest it might still be appropriate to grant an FGMPO given the level of impact on the child. In my judgement, without hearing the oral evidence I cannot determine whether the case reaches the appropriate threshold. I make clear that I am not at this stage of proceedings considering the level of risk that is required to be shown at a final hearing, but merely considering whether it is appropriate to make an order at an interim stage on the basis of the evidence that is currently before me.

21. Secondly, it is my view obvious from the history of this matter that at least part of the purpose of seeking an FGMPO is for the Applicant to be able to produce it to the SSHD as part of her case against removal from the UK. The Applicant also says that her concern is protect her daughter from FGMPO. This is in itself perfectly legitimate. However, it does mean that the court should not simply make such an order because it does no "harm" and might theoretically protect the child if there was a risk. An FGMPO is an important legal order and should not be granted unless the court is satisfied that there is an evidential basis for doing so.

22. For these reasons I decline to grant the order without hearing the oral evidence of the Applicant.

23. The next issue is whether I should appoint a Child's Guardian (CG) under FPR rule 16.4. Dr Proudman referred me to paragraph 7 of the Practice Direction PD16A and the factors set out therein and submits that the Court of Appeal in *Re A* held that a child will be separately represented in proceedings for an FGMPO. She accepts that there is no requirement under the relevant rules to appoint a CG in a case such as this. Indeed, it is quite common for FGMPOs to be made where the child does not have a Guardian appointed. However, she argues that the child has a standpoint or interest which is inconsistent with, or incapable of being represented by, the Applicant. She is particularly concerned here that the FTT has made negative credibility findings in respect of the Applicant and in those circumstances it is particularly important that a CG is appointed to represent the interests of the child.

24. She argues that the views and wishes and feelings of the child could not be adequately met without a report to the court because what was required was a "careful and holistic analysis of all the circumstances of the case and a clear recommendation of what is in this child's best interests". She argues that there are complex issues in the

interrelationship between these proceedings and the past immigration proceedings concerning the Applicant.

25. Dr Proudman also argues that in the other FGMPO cases referred to above, the child has been separately represented through a CG. In particular she refers me to [40] in ***Re X*** where the court refers to the child being separately represented and having her own voice. Finally, she argues that there are international complications in this case because the risk the Applicant alleges is in Nigeria as well as the UK.

26. Mr Harland who appears for the SSHD argues that a Guardian should not be appointed. I note that Dr Proudman objected to the SSHD continuing to intervene as she said that once the immigration documents had been produced the SSHD had no further role. The SSHD applied to intervene, and I made her an Intervenor at an earlier hearing. Given the interrelationship with the immigration issues, and my concern to both ensure that all the relevant documents are before me, but also that I have a range of submissions, it will be of assistance to the Court for the SSHD to intervene and be represented. I therefore do not discharge my earlier order that the SSHD is an Intervenor.

27. Mr Harland argues that the child does not have a standpoint or interest inconsistent or incapable of being represented by the adult parties, in particular the Applicant; indeed, he argues that the child's interest, i.e. to be protected from the risk of FGM, stands with that of the Applicant. He argues that the issues in this case are not complex ones but are narrow issues of fact. Further, he argues that ***Re X*** and ***Re A*** do not assist the Applicant on the appointment of a Guardian. These are fact specific decisions which have material factual differences from the present case.

28. In my judgment it is not necessary or proportionate to appoint a Guardian. I start from the position that there is no legal requirement to appoint a Guardian in an application for a FGMPO, and therefore it must be a matter of discretion for the court. The reference in some of the cases to the child having a Guardian and having her voice heard must have been because Guardians had been appointed and was necessary on the facts of those cases rather than because the court took the view that a Guardian must always be appointed. If this were not the case an FGMPO could not be made or refused without a Guardian in place and the Rules would require such an appointment.

29. The question for the court must be whether there is a purpose in a guardian being appointed. I note that the in PD16A para 7.1 it states;

> *"Making the child a party to proceedings is a step that will be taken only in cases which involve an issue of significant difficulty and consequently will occur only in a minority of cases."*

30. It is important in any litigation to have in mind the overriding objective in FPR1.1 to deal with cases expeditiously, fairly and in a proportionate manner. It is also obviously of the utmost importance to ensure that the interests of the child are protected and this strongly applies in FGM cases given the horrific nature of FGM. In my view, the critical issue here is whether there is any potential conflict between the position of the Applicant and that of the child and whether the Guardian could add anything to the proceedings.

31. On the facts of this case, if the Applicant's case is well founded then her interests and those of the child are identical. The Applicant says she is strongly opposed to FGM and will act to protect EO so far as she is able. On the other hand, if the Applicant's case is not well founded and she is not telling the truth then there is no basis for granting an FGMPO. The case entirely turns on whether or not the risk being put forward by the Applicant is accepted by the court or not.

32. In my view, this case is materially different from both ***Re A*** and ***Re X***. In ***Re A*** the risk arose from the family being deported to Bahrain and then on to Sudan. The family remained together although the father was reported to be in prison in Bahrain and there was a strong likelihood that they would be deported to Sudan where FGM in their home area was reported as being 97.7%. Newton J found that the mother would be isolated and unsupported in Sudan and there was reason to believe she would be unable to protect the child. Both sides of the family had actively endeavoured to place pressure on the family to carry out FGM. The application in that case was made by the local authority, Suffolk County Council, who had assessed there to be a significant risk to the child.

33. In ***Re X*** the mother was going to visit the paternal family in Egypt and her views on FGM and ability to protect the child were at the forefront of the case.

34. In contrast, the present case turns on the credibility of the Applicant. She has not suggested that FGM is so prevalent in Nigeria or in southern Nigeria/Lagos where she was living that it is the simple return to Nigeria which poses the risk. Her case is that the risk is posed by the Father's family as set out in the emails I have referred to above. That is a matter of assessing the evidence that she has produced and her oral evidence. If the court accepts her evidence then the order may well be made, if her evidence is not accepted then the child has no separate interest or case to be advanced. Dr Proudman argued that it is important that the child is not disadvantaged by the taint that exists on the Applicant's credibility. However, on the facts of this case, the Applicant's credibility is central to the existence or otherwise of the risk. In that sense it is different from ***Re A*** where there was strong reason to believe the risk existed quite independently of the credibility of the mother. It is clear in the light of the Suffolk County Council case that in assessing the Applicant's credibility the Family Court must consider the matter for itself and not simply adopt or follow the view of the FTT. For the avoidance of doubt, I make absolutely clear that the Family Court must address the Applicant's credibility wholly independently from the findings of the FTT.

35. Dr Proudman made repeated references to the need to hear the voice of the child. But the child's wishes cannot be in the slightest doubt, she wishes to be protected against FGM, so this is not a situation where a Guardian is needed to ascertain the child's wishes and feelings. The child is 10 years old and allowing her to have a separate voice in the sense of a Guardian expressing her view to the court is of limited value here because whatever understanding she has of FGM the Court will plainly seek to protect her from it. It might be said that there is a role for the Guardian in the process of the litigation but, in my view, that does not stand up to scrutiny. In terms of evidence of risk, that evidence will come from the Applicant. The Respondents have refused to participate in the proceedings, so the only cross examination will be of the Applicant not of the people alleged to create the risk. To the degree the Applicant relies on generic evidence of risk in Nigeria, that is a matter that Dr Proudman will

put forward. There might be a role for separate advocate but given that the Mother and the child's case are coterminous there is little that an advocate for the child would say that Dr Proudman will not be covering. The court would be assisted by someone putting the contrary case but, firstly, that will be done by the SSHD and, secondly, in any event, it must be assumed that an advocate for the child would be supporting the Applicant's case.

36. There are no particularly complex legal issues in this case. The interrelationship between the FTT and SSHD decisions and those of the family court have now been clarified by the Court of Appeal.

37. In those circumstances there would be a very limited role for a Guardian and I do not think that it would be proportionate to appoint one.

38. The next issue is the appointment of the three experts sought by the Applicant. The first is the independent social worker, which is proposed to be Ms Abdulla-Zadeh, to conduct an assessment of the risk of FGM. Dr Proudman's skeleton argument says she is needed to "assess the complex dynamics of macro and micro risk factors." As I have explained above, the Applicant's case for an FGMPO is based on the risk posed by her husband's family. That is the risk asserted and, in my view, it is important to keep that focused case closely in mind. It is not being asserted that the risk of FGM in Lagos is so great as it will be impossible for the Applicant to keep EO safe, it is a much more focused case. When the Mother lived in Lagos she says that she did arrange for the removal of EO from the Father's family in order to protect her, but alleges that her family were then attacked by the Father's family trying to locate the child. The evidence that there is any risk to EO in the UK is exceptionally limited. Further, this is not a case where an independent social worker could interview other family members to ascertain their views and the risks they have posed. The husband's family have made it entirely clear that they will not participate in the proceedings. Equally, there is no benefit in the social worker ascertaining the child's views given that she is not of an age to have any detailed understanding of the issue and the court would seek to protect her whatever her view of FGM.

39. Dr Proudman suggested the social worker would have a role in teaching the child strategies to protect herself from FGM in the future. Although there is doubtless benefit in any girl living in a country where FGM is practised to understand such strategies, that cannot be a reason to instruct an expert in proceedings such as this.

40. I do also note that neither Redbridge nor Havering have chosen to take any part in these proceedings (the Applicant has now moved to Havering). This is another key distinction from the other cases relied upon where an independent body with a safeguarding role had thought it appropriate to bring the matter to court.

41. In those circumstances I do not accept that there will be any gap in the evidence if there is no independent social worker evidence. It is important to take a proportionate approach to this litigation and not allow this case to absorb a disproportionate amount of both court and legal aid resources.

42. The second application is in relation to Professor Bradley, an expert on FGM in Nigeria, to report on the risk of FGM for the child in Nigeria. As Mr Harland points out, the SSHD has produced a Country Information Note in respect of the risk of

FGM in Nigeria. Home Office Country Information Notes are produced for the purposes of immigration control, however in practice here it is going to cover many of the same evidential issues as would be set out by the expert, namely the level of risk in a particular place and within potentially different parts of the relevant communities. In many cases there will be a place for expert evidence on specific risk, as is shown by *Re A* and *Re X.* This might be particularly the case where there are issues about the very specific nature of the risk. However, here as I have said, the Applicant's case is very focused, it is that the First Respondent's family intend to carry out FGM by reason of threats they have issued. If the Applicant's case on this is not accepted then it is not being argued that the generic risk of FGM in Lagos/southern Nigeria is such that an FGMPO would be appropriate. Even if that becomes the case the crucial issue will be whether the Mother could act to protect the child, which again turns on her own evidence.

43. In my view, on the facts of this case, it is not necessary within FPR 25 to appoint an expert. The SSHD has produced a country policy and information note on FGM in Nigeria which is detailed and recent (August 2019) and refers to an independent report by UNICEF which itself has carried out investigations into FGM in Nigeria. The UNICEF report is extensively relied upon in the Country Information Note and sets out figures on prevalence of FGM including specifically in southern Nigeria. That material is sufficient for the court to consider any wider risk of FGM beyond that being put forward on the specific facts of the case. In practice it is highly likely to be the case that there would be no contest on the level of generic risk and the case will turn on the family specific evidence of the Applicant. In those circumstances it is not proportionate to require expert evidence.

44. Finally, the Applicant applies for an expert psychiatric assessment in the following terms;

> *"Dr Sumi Ratnam is an expert Psychiatrist. She can complete psychiatric assessment of the Mother, stating the effects that FGM has had on her, and the likely effects it will have on [EO]."*

45. The Applicant says that she has suffered from anxiety and depression and I have seen a letter from the GP stating that she was seen for depression and has been advised to undertake talking therapies.

46. In my view a psychiatric assessment is not necessary to determine this case fairly. As I have said, the case turns on the court's assessment of risk of FGM and that turns largely if not wholly, on the Applicant's evidence. The court does not need evidence as to psychiatric impact of FGM either on the Mother or on the child because as the case is being put that does not go to the risk. The Applicant has been clear that she wishes to protect the child from FGM and will seek to do so in Nigeria. If the court does not accept the Applicant's evidence on the nature of the risk from the Father's family then that is very likely to be determinative of the case. If the court does accept her evidence then that is equally likely to be determinative.

47. I also note that the Applicant had not previously suggested that her mental state is such that she will not be able to protect the child. Her case has focused entirely on the risk posed by the Father's family. Dr Proudman now argues that the Applicant's mental health will make her unable to protect the child in Nigeria. She says that a

psychiatric assessment is needed in order to give the court information on whether any mental health diagnosis will impact on her ability to protect the child. However, as I have already explained, as I understand the Applicant's case her mental health is unlikely to be a determinative issue.

48. For these reasons I reject the Part 25 applications.

49. I will list this case for a final hearing on a date in early October. I will ask the parties to liaise with my clerk to find a suitable date.