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**Tea Time Training: Honour Based Abuse Seminar.
Female Genital Mutilation Act & Forced Marriage Protection Orders.**

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Female Genital Mutilation Act 2003 Sch 2 Pt 1
Power to make FGM protection order

1(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).

Applications and other occasions for making orders

2(1)The court may make an FGM protection order—

- (a)on an application being made to it, or
- (b)without an application being made to it but in the circumstances mentioned in sub-paragraph (6).

(2)An application may be made by—

- (a)the girl who is to be protected by the order, or
- (b)a relevant third party.

(3)An application may be made by any other person with the leave of the court.

(4)In deciding whether to grant leave, the court must have regard to all the circumstances including—

- (a)the applicant's connection with the girl to be protected;
- (b)the applicant's knowledge of the circumstances of the girl.

(5)An application under this paragraph may be made in other family proceedings or without any other family proceedings being instituted.

(6)The circumstances in which the court may make an order without an application being made are where—

- (a)any other family proceedings are before the court (“the current proceedings”),

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(b) the court considers that an FGM protection order should be made to protect a girl (whether or not a party to the proceedings), and

(c) a person who would be a respondent to any proceedings for an FGM protection order is a party to the current proceedings.

(7) In this paragraph—

- “family proceedings” has the same meaning as in Part 4 of the Family Law Act 1996 (see section 63(1) and (2) of that Act), but also includes—
 - (a) proceedings under the inherent jurisdiction of the High Court in relation to adults,
 - (b) proceedings in which the court has made an emergency protection order under section 44 of the Children Act 1989 which includes an exclusion requirement (as defined in section 44A(3) of that Act), and
 - (c) proceedings in which the court has made an order under section 50 of the Children Act 1989 (recovery of abducted children etc);
- “relevant third party” means a person specified, or falling within a description of persons specified, by regulations made by the Lord Chancellor (and such regulations may, in particular, specify the Secretary of State).

(8) Regulations under sub-paragraph (7) are to be made by statutory instrument, and any such instrument is subject to annulment in pursuance of a resolution of either House of Parliament.

Power to make order in criminal proceedings

3 The court before which there are criminal proceedings in England and Wales for a genital mutilation offence may make an FGM protection order (without an application being made to it) if—

(a) the court considers that an FGM protection order should be made to protect a girl (whether or not the victim of the offence in relation to the criminal proceedings), and

(b) a person who would be a respondent to any proceedings for an FGM protection order is a defendant in the criminal proceedings.

Offence of breaching order

4(1) A person who without reasonable excuse does anything that the person is prohibited from doing by an FGM protection order is guilty of an offence.

(2) In the case of an FGM protection order made by virtue of paragraph 5(1), a person can be guilty of an offence under this paragraph only in respect of conduct engaged in at a time when the person was aware of the existence of the order.

(3) Where a person is convicted of an offence under this paragraph in respect of any conduct, the conduct is not punishable as a contempt of court.

(4) A person cannot be convicted of an offence under this paragraph in respect of any conduct which has been punished as a contempt of court.

(5) A person guilty of an offence under this paragraph is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;

(b) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates’ court, or a fine, or both.

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(6) A reference in any enactment to proceedings under this Part of this Schedule, or to an order under this Part of this Schedule, does not include a reference to proceedings for an offence under this paragraph or to an order made in proceedings for such an offence.

(7) “Enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978.

Ex parte orders

5(1) The court may, in any case where it is just and convenient to do so, make an FGM protection order even though the respondent has not been given such notice of the proceedings as would otherwise be required by rules of court.

(2) In deciding whether to exercise its powers under sub-paragraph (1), the court must have regard to all the circumstances including—

(a) the risk to the girl, or to another person, of becoming a victim of a genital mutilation offence if the order is not made immediately,

(b) whether it is likely that an applicant will be deterred or prevented from pursuing an application if an order is not made immediately, and

(c) whether there is reason to believe that—

(i) the respondent is aware of the proceedings but is deliberately evading service, and

(ii) the delay involved in effecting substituted service will cause serious prejudice to the girl to be protected or (if different) an applicant.

(3) The court must give the respondent an opportunity to make representations about an order made by virtue of sub-paragraph (1).

(4) The opportunity must be—

(a) as soon as just and convenient, and

(b) at a hearing of which notice has been given to all the parties in accordance with rules of court.

Variation and discharge of orders

6(1) The court may vary or discharge an FGM protection order on an application by—

(a) any party to the proceedings for the order,

(b) the girl being protected by the order (if not a party to the proceedings for the order), or

(c) any person affected by the order.

(2) In the case of an order made in criminal proceedings under paragraph 3, the reference in sub-paragraph (1)(a) to a party to the proceedings for the order is to be read as a reference to the prosecution and the defendant.

(3) In addition, the court may vary or discharge an FGM protection order made by virtue of paragraph 2(1)(b) or 3 even though no application under sub-paragraph (1) above has been made to the court.

(4) Paragraph 5 applies to a variation of an FGM protection order as it applies to the making of such an order (and references in that paragraph to the making of an FGM protection order are to be read accordingly).

Arrest under warrant

7(1) An interested party may apply to the relevant judge for the issue of a warrant for the arrest of a person if the interested party considers that the person has failed to comply with an FGM protection order or is otherwise in contempt of court in relation to such an order.

(2) The relevant judge must not issue a warrant on an application under sub-paragraph (1) unless—

(a) the application is substantiated on oath, and

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(b) the relevant judge has reasonable grounds for believing that the person to be arrested has failed to comply with the order or is otherwise in contempt of court in relation to the order.

(3) In this paragraph “interested party”, in relation to an FGM protection order, means—

- (a) the girl being protected by the order,
- (b) (if a different person) the person who applied for the order, or
- (c) any other person;

but no application may be made under sub-paragraph (1) by a person falling within paragraph (c) without leave of the relevant judge.

Remand: general

8(1) The court before which an arrested person is brought by virtue of a warrant under paragraph 7 may, if the matter is not then disposed of immediately, remand the person concerned.

(2) Paragraphs 9 to 14 contain further provision about the powers of a court to remand under this paragraph.

(3) Sub-paragraph (4) applies if a person remanded under this paragraph is granted bail under paragraphs 10 to 14.

(4) The person may be required by the relevant judge to comply, before release on bail or later, with such requirements as appear to the judge to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

Remand: medical examination and report

9(1) Any power to remand a person under paragraph 8(1) may be exercised for the purpose of enabling a medical examination and report to be made if the relevant judge has reason to consider that a medical report will be required.

(2) If such a power is so exercised, the adjournment must not be for more than four weeks at a time unless the relevant judge remands the accused in custody.

(3) If the relevant judge remands the accused in custody, the adjournment must not be for more than three weeks at a time.

(4) Sub-paragraph (5) applies if there is reason to suspect that a person who has been arrested under a warrant issued on an application under paragraph 7(1) is suffering from mental disorder within the meaning of the Mental Health Act 1983.

(5) The relevant judge has the same power to make an order under section 35 of the Mental Health Act 1983 (remand for report on accused's mental condition) as the Crown Court has under section 35 of that Act in the case of an accused person within the meaning of that section.

Remand: further provision

10(1) Where a court has power to remand a person under paragraph 8, the court may remand the person in custody or on bail.

(2) If remanded in custody, the person is to be committed to custody to be brought before the court—

- (a) at the end of the period of remand, or
- (b) at such earlier time as the court may require.

(3) The court may remand a person on bail—

(a) by taking from the person a recognizance (with or without sureties) conditioned as provided in paragraph 11, or

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(b) by fixing the amount of the recognizances with a view to their being taken subsequently in accordance with paragraph 14 and, in the meantime, committing the person to custody as mentioned in sub-paragraph (2) above.

(4) Where a person is brought before the court after remand the court may further remand the person.

(5) In this paragraph and in paragraphs 11 to 14, references to “the court” includes a reference to a judge of the court or, in the case of proceedings in a magistrates' court, a justice of the peace.

11(1) Where a person is remanded on bail, the court may direct that the person's recognizance be conditioned for his or her appearance—

(a) before the court at the end of the period of remand, or

(b) at every time and place to which during the course of the proceedings the hearing may from time to time be adjourned.

(2) Where a recognizance is conditioned for a person's appearance as mentioned in sub-paragraph (1), the fixing of any time for the person next to appear is to be treated as a remand.

(3) Nothing in this paragraph deprives the court of power at any subsequent hearing to remand a person afresh.

12(1) The court may not remand a person for a period exceeding 8 clear days unless—

(a) the court adjourns a case under paragraph 9(1), or

(b) the person is remanded on bail and both that person and the other party to the proceedings (or, in the case of criminal proceedings, the prosecution) consent.

(2) If sub-paragraph (1)(a) applies, the person may be remanded for the period of the adjournment.

(3) Where the court has power to remand a person in custody, the person may be committed to the custody of a constable if the remand is for a period not exceeding 3 clear days.

13(1) If the court is satisfied that a person who has been remanded is unable by reason of illness or accident to appear before the court at the end of the period of remand, the court may further remand the person in his or her absence.

(2) The power in sub-paragraph (1) may, in the case of a person who was remanded on bail, be exercised by enlarging the person's recognizance and those of any sureties to a later time.

(3) Where a person remanded on bail is bound to appear before the court at any time and the court has no power to remand the person under sub-paragraph (1), the court may, in the person's absence, enlarge the person's recognizance and those of any sureties for the person to a later time.

(4) The enlargement of a person's recognizance is to be treated as a further remand.

(5) Paragraph 12(1) (limit of remand) does not apply to the exercise of the powers conferred by this paragraph.

14(1) This paragraph applies where under paragraph 10(3)(b) the court fixes the amount in which the principal and the sureties (if any) are to be bound.

(2) The recognizance may afterwards be taken by a person prescribed by rules of court (with the same consequences as if it had been entered into before the court).

Contempt proceedings

15 The powers of the court in relation to contempt of court arising out of a person's failure to comply with an FGM protection order, or otherwise in connection with such an order, may be exercised by the relevant judge

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Other protection or assistance against female genital mutilation

16 (1) Nothing in this Part of this Schedule affects any other protection or assistance available to a girl who is or may become the victim of a genital mutilation offence.

(2) In particular, it does not affect—

- (a) the inherent jurisdiction of the High Court;
- (b) any criminal liability;
- (c) any civil remedies under the Protection from Harassment Act 1997;
- (d) any right to an occupation order or a non-molestation order under Part 4 of the Family Law Act 1996;
- (e) any right to a forced marriage protection order under Part 4A of that Act;
- (f) any protection or assistance under the Children Act 1989;
- (g) any claim in tort.

Interpretation

17 (1) In this Part of this Schedule—

- “the court”, except as provided in sub-paragraph (2), means the High Court, or the family court, in England and Wales;
- “FGM protection order” means an order under paragraph 1;
- “genital mutilation offence” means an offence under section 1, 2 or 3;
- “the relevant judge”, in relation to an FGM protection order, means—
 - (a) where the order was made by the High Court, a judge of that court;
 - (b) where the order was made by the family court, a judge of that court;
 - (c) where the order was made by a court in criminal proceedings under paragraph 3—
 - (i) a judge of that court, or
 - (ii) a judge of the High Court or of the family court.

(2) Where the power to make an FGM protection order is exercisable by a court in criminal proceedings under paragraph 3, references in this Part of this Schedule to “the court” (other than in paragraph 2) are to be read as references to that court.

(3) In paragraph (c)(i) of the definition of “relevant judge” in sub-paragraph (1), the reference to a judge of the court that made the order includes, in the case of criminal proceedings in a magistrates' court, a reference to a justice of the peace.

Forced Marriage Protections Orders – s63A -G Family Law Act 1996

63A Forced marriage protection orders

(1) The court may make an order for the purposes of protecting—

- (a) a person from being forced into a marriage or from any attempt to be forced into a marriage; or
- (b) a person who has been forced into a marriage.

(2) In deciding whether to exercise its powers under this section 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 person to be protected.

(3) In ascertaining that person's well-being, the court must, in particular, have such regard to the person's wishes and feelings (so far as they are reasonably ascertainable) as the court considers appropriate in the light of the person's age and understanding.

(4) For the purposes of this Part a person ("A") is forced into a marriage if another person ("B") forces A to enter into a marriage (whether with B or another person) without A's free and full consent.

(5) For the purposes of subsection (4) it does not matter whether the conduct of B which forces A to enter into a marriage is directed against A, B or another person.

(6) In this Part—

- "force" includes coerce by threats or other psychological means (and related expressions are to be read accordingly); and
- "forced marriage protection order" means an order under this section.

63B Contents of orders

(1) A forced marriage 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.

(2) The terms of such orders 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 force or attempt to force, or may force or attempt to force, a person to enter into a marriage;
- (c) other persons who are, or may become, involved in other respects as well as respondents of any kind.

(3) For the purposes of subsection (2) examples of involvement in other respects are—

- (a) aiding, abetting, counselling, procuring, encouraging or assisting another person to force, or to attempt to force, a person to enter into a marriage; or
- (b) conspiring to force, or to attempt to force, a person to enter into a marriage.

63C Applications and other occasions for making orders

(1) The court may make a forced marriage protection order—

- (a) on an application being made to it; or
- (b) without an application being made to it but in the circumstances mentioned in subsection (6).

(2) An application may be made by—

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(a) the person who is to be protected by the order; or

(b) a relevant third party.

(3) An application may be made by any other person with the leave of the court.

(4) In deciding whether to grant leave, the court must have regard to all the circumstances including—

(a) the applicant's connection with the person to be protected;

(b) the applicant's knowledge of the circumstances of the person to be protected; and

(c) the wishes and feelings of the person to be protected so far as they are reasonably ascertainable and so far as the court considers it appropriate, in the light of the person's age and understanding, to have regard to them.

(5) An application under this section may be made in other family proceedings or without any other family proceedings being instituted.

(6) The circumstances in which the court may make an order without an application being made are where—

(a) any other family proceedings are before the court (“the current proceedings”);

(b) the court considers that a forced marriage protection order should be made to protect a person (whether or not a party to the current proceedings); and

(c) a person who would be a respondent to any such proceedings for a forced marriage protection order is a party to the current proceedings.

(7) In this section—

- “family proceedings” has the same meaning as in Part 4 (see section 63(1) and (2)) but also includes—
 - (a) proceedings under the inherent jurisdiction of the High Court in relation to adults;
 - (b) proceedings in which the court has made an emergency protection order under section 44 of the Children Act 1989 (c. 41) which includes an exclusion requirement (as defined in section 44A(3) of that Act); and
 - (c) proceedings in which the court has made an order under section 50 of the Act of 1989 (recovery of abducted children etc.); and
- “relevant third party” means a person specified, or falling within a description of persons specified, by order of the Lord Chancellor.

(8) An order of the Lord Chancellor under subsection (7) may, in particular, specify the Secretary of State.

Offence of breaching order

(1) A person who without reasonable excuse does anything that the person is prohibited from doing by a forced marriage protection order is guilty of an offence.

(2) In the case of a forced marriage protection order made by virtue of section 63D(1), a person can be guilty of an offence under this section only in respect of conduct engaged in at a time when the person was aware of the existence of the order.

(3) Where a person is convicted of an offence under this section in respect of any conduct, that conduct is not punishable as a contempt of court.

(4) A person cannot be convicted of an offence under this section in respect of any conduct which has been punished as a contempt of court.

(5) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;

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(b) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates' court, or a fine, or both.

(6) A reference in any enactment to proceedings under this Part, or to an order under this Part, does not include a reference to proceedings for an offence under this section or to an order made in proceedings for such an offence.

(7) "Enactment" includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978.

63D Ex parte orders: Part 4A

(1) The court may, in any case where it considers that it is just and convenient to do so, make a forced marriage protection order even though the respondent has not been given such notice of the proceedings as would otherwise be required by rules of court.

(2) In deciding whether to exercise its powers under subsection (1), the court must have regard to all the circumstances including—

(a) any risk of significant harm to the person to be protected or another person if the order is not made immediately;

(b) whether it is likely that an applicant will be deterred or prevented from pursuing an application if an order is not made immediately; and

(c) whether there is reason to believe that—

(i) the respondent is aware of the proceedings but is deliberately evading service; and

(ii) the delay involved in effecting substituted service will cause serious prejudice to the person to be protected or (if a different person) an applicant.

(3) The court must give the respondent an opportunity to make representations about any order made by virtue of subsection (1).

(4) The opportunity must be—

(a) as soon as just and convenient; and

(b) at a hearing of which notice has been given to all the parties in accordance with rules of court.

63E Undertakings instead of orders

(1) In any case where the court has power to make a forced marriage protection order, the court may accept an undertaking from the respondent instead of making the order.

(2) But a court may not accept an undertaking under subsection (1) if it appears to the court—

(a) that the respondent has used or threatened violence against the person to be protected, and

(b) that, for the person's protection, it is necessary to make a forced marriage protection order so that any breach of it by the respondent may be punishable under section 63CA.

(4) An undertaking given to the court under subsection (1) is enforceable as if the court had made the order in terms corresponding to those of the undertaking.

(5) This section is without prejudice to the powers of the court apart from this section.

63F Duration of orders

A forced marriage protection order may be made for a specified period or until varied or discharged.

63G Variation of orders and their discharge

(1)The court may vary or discharge a forced marriage protection order on an application by—

(a)any party to the proceedings for the order;

(b)the person being protected by the order (if not a party to the proceedings for the order); or

(c)any person affected by the order.

(2)In addition, the court may vary or discharge a forced marriage protection order made by virtue of section 63C(1)(b) even though no application under subsection (1) above has been made to the court.

(3)Section 63D applies to a variation of a forced marriage protection order as it applies to the making of such an order.

(4)Section 63E applies to proceedings for a variation of a forced marriage protection order as it applies to proceedings for the making of such an order.

(5)Accordingly, references in sections 63D and 63E to making a forced marriage protection order are to be read for the purposes of subsections (3) and (4) above as references to varying such an order.

Re K (Forced Marriage: Passport Orders) [2020] EWCA Civ 190

FMPO Applications: A Routemap to Judgment

45. Drawing the key principles that have been identified together, I hope it will be of assistance to courts if I now set out a "routemap" in four stages to be followed when the court is considering making a FMPO in any particular case.
46. Stage One is for the court to establish the underlying facts based upon admissible evidence and by applying the civil standard of proof. The burden of proof will ordinarily be upon the applicant who asserts the facts that are said to justify the making of a FMPO.
47. Where an application for a FMPO is contested at an on notice hearing it will be necessary for the court to determine any relevant factual issues. In the course of her August 2018 judgment, HHJ Tucker referred to *Re A (Forced Marriage: Special Advocates)* [2010] EWHC 2438 (Fam). She observed that in *Re A* Sir Nicholas Wall P "emphasised the protective and injunctive nature of a FMPO and expressed the view that it did not depend on a complex factual matrix so that the decision could be made without detailed investigation of the factual issues."
48. It is necessary to refer to the precise words used by Sir Nicholas Wall P at paragraph 90 of his judgment:
- "...The first is the nature of the relief given by the Act. It is protective - quasi injunctive – and does not depend upon a complex factual matrix. The person to be protected has for most of the proceedings not sought actively to disturb the order. If, therefore, the view is taken that there is a proper basis for the court's exercise of its jurisdiction under the Act an order under the Act can properly be made *ex parte*.
- ...
93. This leaves the wider question as to whether or not special advocates are needed to resolve the issues of fact which may arise on any application to discharge."
49. It is plain that Sir Nicholas Wall's observations regarding the absence of a need to depend upon a complex factual matrix relate to the first without notice hearing of a FMPO application. At that stage, the court's primary role is protective and can be exercised without a detailed analysis of the underlying facts. Where, however, as here, the continuation of a FMPO is contested, it will be necessary for the court to undertake an ordinary fact-finding evaluation of any potentially relevant factual issues.
50. At Stage Two, based on the facts that have been found, the court should determine whether or not the purpose identified in FLA 1996, s 63A(1) is established, namely that there is a need to protect a person from being forced into a marriage or from any attempt to be forced into a marriage, or that a person has been forced into a marriage.
51. At Stage Three, based upon the facts that have been found, the court must then assess both the risks and the protective factors that relate to the particular circumstances of the individual who is said to be vulnerable to forced marriage. This is an important stage and the court may be assisted by drawing up a balance sheet of the positives and negatives within the circumstances of the particular family in so far as they may relate to the potential for forced marriage.
52. At the conclusion of Stage Three, the court must explicitly consider whether or not the facts as found are sufficient to establish a real and immediate risk of the subject of the application suffering inhuman or degrading treatment sufficient to cross the ECHR, Article 3, threshold.

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53. At Stage Four, if the facts are sufficient to establish a risk that the subject will experience conduct sufficient to satisfy ECHR, Article 3, the court must then undertake the exercise of achieving an accommodation between the necessity of protecting the subject of the application from the risk of harm under Article 3 and the need to respect their family and private life under Article 8 and, within that, respect for their autonomy. This is not a strict "balancing" exercise as there is a necessity for the court to establish the minimum measures necessary to meet the Article 3 risk that has been established under Stage Three.
54. In undertaking the fourth stage, the court should have in mind the high degree of flexibility which is afforded to the court by the open wording of FLA 1996, s 64A. In each case, the court should be encouraged to establish a bespoke order which pitches the intrusion on private and family life at the point which is necessary in order to meet the duty under Article 3, but no more. The length of the order, the breadth of the order and the elements within the order should vary from case-to-case to reflect the particular factual context; this is not a jurisdiction that should ordinarily attract a template approach.
55. In assessing the length of time that any provision within a FMPO is in force, the court should bear in mind that the circumstances within any family, and relating to any individual within such a family, may change. It is unlikely in all but the most serious and clear cases that the court will be able to see far enough into the future to make an open-ended order which will remain in force unless and until it is varied or terminated by a subsequent application. In other cases, the court should look as far as it can in assessing risk but no further. The court should first consider whether a finite order adequately meets the risk, with the consequence (if it does) that the applicant for the order will have to seek a further order at the end of the term if further protection is then needed. A date should be fixed on which the order, or a specific provision within it, is reviewed by the court.

Passport orders

56. The open and flexible wording of FLA 1996, s 63B(1), which permits the court to make an order containing such prohibitions, restrictions or other terms as the court considers appropriate for the purpose of protecting a person from forced marriage, plainly can include the imposition of a travel ban and/or the confiscation of a passport. No party to this appeal suggested otherwise and, indeed, the Family Procedure Rules 2010, Procedural Guide (at Section A9) states that a FMPO may include orders:
- "• prohibiting the removal of the person to be protected ["PTBP"] from the jurisdiction;
 - prohibiting the named respondent from applying for a passport or other travel documents for the PTBP;
 - for surrender of passports and order for the Identity and Passport Service to cancel any passport issued and not to issue any further or new passport without leave of the court."
57. The focus, therefore, is not so much upon the jurisdiction as a whole, but upon the manner in which it is exercised and, particularly, whether such orders could ever be justified on an open-ended basis.

Passport order: Conclusion

62. For the reasons that have already been given, it is plain that the jurisdiction to make a FMPO extends to the protection of adults who have capacity to make decisions for themselves, in particular in the context of marriage and foreign travel. The statistics demonstrate that the courts regularly make FMPOs to protect capacitous adults.
63. The flexibility and breadth of the jurisdiction established by FLA 1996, s 63B, to protect an individual whose circumstances meet s 63B is in the widest and most flexible terms.

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64. The wishes and feelings of the individual who may be subject to an FMPO are relevant, but are to be assessed as part of the court's overall analysis of that person's "wellbeing" and to the extent that the court considers it appropriate to have regard to that person's wishes and feelings. This is so whether or not the person has capacity to make decisions about marriage and travel.
65. It follows that where an adult, even if they are capacitous expresses wishes and feelings to pursue a course of action, the court has jurisdiction, where the facts found and the assessment of the Article 3 risk so justify, to make orders protecting that person from doing that which she wishes to do. In short, the court can make an order protecting a person from themselves. Where that is the case, the court should be plain that that is the course that it is taking and give adequate reasons.
66. In an appropriate case, in addition to removing the means to travel by making a passport order, the jurisdiction under FLA 1996, Part 4A, is sufficiently wide to make an express injunction against the person to be protected preventing them from leaving the jurisdiction. Indeed, it may be a protective act for the court to make explicit, as to do otherwise might render the person more vulnerable to pressure from the family if it was thought that that person retained the ability, subject to a passport, voluntarily to leave the country. However, making an express injunction against the person to be protected opens up, as a matter of law, the prospect of proceedings against that person were it subsequently to be said that they had breached the court order. It is, therefore, a step that a court should only take after a very careful analysis of the risks and the degree to which protection is necessary.
67. Whilst the breadth and flexibility of the court's jurisdiction applies to the making of a passport order just as it may apply to any other element within a FMPO, I agree with Ms Fottrell's submission that the authorities establish that an open-ended passport order or travel ban should only be imposed in the most exceptional of cases and where the court can look sufficiently far into the future to be satisfied that highly restrictive orders of that nature will be required indefinitely. In all other cases, the court should impose a time limit when making such orders. The time limit will vary from case-to-case and, like all other elements, be a bespoke provision imposing a restriction only in so far as that is justified on the facts as found. Unless the court can see with clarity that there will be no need for any continuing order after a particular date, for example when it is clear that the circumstances will change so that the risk is removed, the appropriate course will be for the court to list the matter for further review a short time before the passport and/or travel ban will otherwise expire.

Marriage and Civil Partnership (Minimum Age) Act 2022

1. Marriage: increase of minimum age to 18

2. Offence of conduct relating to marriage of persons under 18

(1) Section 121 of the Anti-social Behaviour, Crime and Policing Act 2014 (offence of forced marriage: England and Wales) is amended as follows.

(2) After subsection (3) insert—

“(3A) A person commits an offence under the law of England and Wales if he or she carries out any conduct for the purpose of causing a child to enter into a marriage before the child’s eighteenth birthday (whether or not the conduct amounts to violence, threats, any other form of coercion or deception, and whether or not it is carried out in England and Wales).”

(3) After subsection (5) insert—

“(5A) “Child” means a person under the age of 18 years.”

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(4) In subsection (6)—

(a) after “(1)” insert “or subsection (3A)”;

(b) for “that subsection” substitute “either of those subsections”.

(5) After subsection (7) insert—

“(7A) A person commits an offence under subsection (3A) only if—

(a) the conduct is for the purpose of causing the child to enter into a marriage in England or Wales,

(b) at the time of the conduct, the person or child is habitually resident in England and Wales, or

(c) at the time of the conduct, the child is a United Kingdom national who—

(i) has been habitually resident in England and Wales, and

(ii) is not habitually resident or domiciled in Scotland or Northern Ireland.”