

Female Genital Mutilation (FGM) Consultation 2018



Background

The Children's Hearings System is Scotland's distinct system of child protection and youth justice. Among its fundamental principles are:

- the needs of children or young people in trouble should be met through a single holistic and integrated system, whether concerns relate to their welfare or behaviour
- a preventative approach is essential, involving early identification and diagnosis of problems
- the welfare of the child remains at the centre of all decision making and the child's best interests are paramount throughout
- the child's engagement and participation is crucial to good decision making

SCRA operates the Reporter service which sits at the heart of the system. SCRA employs Children's Reporters who are located throughout Scotland, working in close partnership with panel members and other professionals such as social work, education, the police, the health service and the courts system. SCRA's vision is that vulnerable children and young people in Scotland are safe, protected and offered positive futures. We will seek to achieve this by adhering to the following key values:

- The voice of the child must be heard
- Our hopes and dreams for the children of Scotland are what unite us
- Children and young people's experiences and opinions guide us
- We are approachable and open
- We bring the best of the past with us into the future to meet new challenges.

SCRA does not expressly gather information in relation to cases where FGM is a consideration for a child or young person. In preparation for this consultation response we have asked nationally for cases where FGM has been a consideration to be reported back – and we have had no responses from frontline staff. This does not mean that cases do not occur – but does suggest that FGM is not being addressed through the statutory intervention of the Children's Hearing System.





SCRA welcomes the opportunity to respond to this consultation. SCRA has dealt with referrals where FGM or the risk of FGM is a feature, and has dealt with these cases successfully. The following case study indicates the way in which Reporters and the Children's Hearing System can already work with FGM concerns in the best interest of the child concerned.

Case Study – Lisa

Lisa travelled to the UK from Somalia on her own. She was sent to live with carers she had never met, who were acquaintances of members of her family and who lived in Scotland. Lisa's carers were active members within the Somali community and were planning to take her back to Somalia for her 13th birthday.

Lisa was assessed to be at risk of FGM if she were to return to Somalia. Grounds for referral in relation to section 67 (2) (a) of the Children's Hearings (Scotland) Act 2011 - lack of parental care - were put to Lisa at a Children's Hearing. The associated statements of fact spelt out that Lisa was an unaccompanied minor who had been staying with people she had not ties of affection to, or relationship with and that Lisa was at risk of FGM if she were to return to her family in Somalia.

Lisa had legal advice and accepted the ground for referral and associated statements of fact. Lisa also told the Children's Hearing about her awareness of FGM within her family in relation to her Mother and sister, and indicated that her carer had also been cut. Lisa was made subject to a Compulsory Supervision Order requiring her to live with Foster Carers.





QUESTION 1: do you believe that a provision for anonymity for victims of FGM should be introduced? Please explain your answer.

Yes.

FGM cases concern private and intimate details and should not be heard in public. And in line with sexual offences cases the victims of FGM prosecutions should have a right to anonymity.

QUESTION 2: If anonymity is not introduced and having regard to existing convention and powers of the courts, what further steps do you consider could be taken to ensure protection of victims and complainers of FGM in the Justice system?

Anonymity is the approach we should take for FGM victims and complainers.

To not grant anonymity would introduce legal procedures which would complicate and obfuscate the criminal justice process and make a difficult situation for the victim even worse.

QUESTION 3: Do you think that Scotland should introduce an offence so that individuals can be prosecuted if they fail to protect a person they have caring responsibilities for being subjected to FGM? Please explain your answer.

We agree with the Scottish Government that there are a number of challenges in introducing this specific offence.

Instead, we think that strong Statutory Guidance for professionals working with young people who are at risk and their carers in conjunction with a public health campaign in relation to FGM would focus everyone on the need to protect girls and women from the physical violation of FGM.





QUESTION 5: Do you think that the Scottish Government should introduce Female Genital Mutilation Protection Orders? Please explain your answer.

Whilst it is difficult to argue with the principle of a FGMPO it is also difficult to support its creation - as we have no clear sense of the need for this order. We have no sense of the numbers of young people the order would benefit and we feel that existing provisions could be used more effectively to provide the protections the FGMPO would provide.

We also have some concern that the FGMPO as outlined suggests that responsibility for applying for the order could sit with the young person at risk of FGM. We would advocate strongly that responsibility for protection lies with professional agencies and within our GIRFEC and Corporate Parenting responsibilities.

We feel that Statutory Guidance should indicate clearly the process which should be followed by professionals in order to protect children and young people who are at risk – and that existing child protection procedures and a child protection order would effectively work in these situations.

For ‘adults’ at risk (over 16) it may be that a different process should be in place to assess risk and to support them in keeping themselves safe. It may be that extending the potential of referral to the Reporter / Children’s Hearing to young people between the ages of 16 – 18 could strengthen the protections around these young women if they are vulnerable.

QUESTION 6: What do you think the penalty should be for breach of a FGMPO?

No answer given.





QUESTION 7: Do you think the Scottish Government should introduce a duty to notify Police of FGM? Please explain your answer.

We agree with the Scottish Government that there are clear challenges in relation to this – and we agree that the focus of our work should be the effective protection of young women and providing appropriate support to keep them safe. In some cases this appropriate support may involve educating members of the wider family in order for them to make a significant cultural shift. A duty to notify Police would criminalise behaviours which may take the focus away from the provision of appropriate supports.

However, we feel that where there is criminal activity there should be clear provision for that to be investigated – and that the Statutory Guidance should be clear about when and how this should occur – including how victims and complainers are prepared for such an investigation.

QUESTION 8: Do you agree that the Scottish Government should issue statutory guidance for professionals in relation to female genital mutilation? Please explain your answer.

Yes.

SCRA thinks that this Statutory Guidance will be crucial. We have referenced Statutory Guidance throughout this response and we think that professional approaches and practices, alongside wider public awareness of FGM issues are perhaps more critical to addressing FGM than any criminal justice approach.





QUESTION 9: Using existing non-statutory guidance as a basis, what should be covered by statutory guidance?

The November 2017 Multi-Agency Guidance is comprehensive. Statutory guidance should supplement this multi-agency document and should be focussed and succinct – referring to the more developed multi-agency guidance where necessary. The Statutory Guidance should prepare professionals in relation to the risk of FGM and the signs of FGM and should have a clear multi-agency process in place for professionals to follow as and when cases occur.

The Statutory Guidance needs to include:

- 1.** Accepted definitions of FGM including vaginal elongation and breast ironing.
- 2.** A definition of terms / language in relation to FGM.
- 3.** The process for assessing a child or young person who is at risk of FGM, including the consideration of child protection procedures and statutory intervention through the Children’s Hearing System.
- 4.** The process for supporting a child or young person who has been harmed by FGM, including the consideration of child protection procedures and statutory intervention through the Children’s Hearing System.
- 5.** The support that is to be provided to the wider family – including Mother and siblings who may also be at risk of FGM or have been harmed by FGM.
- 6.** The process to be followed when a Police investigation of criminal behaviour in relation to FGM should be followed.





7. The preparation and support which should be given to victims and complainers when any Police investigation in relation to FGM occurs.
8. The preparation and support which should be given to victims and complainers if there is to be any prosecution within the criminal court where they will be required to give evidence.
9. FGM victims and complainers should be seen as vulnerable witnesses from the outset of any criminal justice process and their evidence and the challenge of their evidence should be pre-recorded at the earliest opportunity so that they can be quickly supported in a therapeutic way.
10. The development of safety planning for all family members who are assessed to be at risk of harm.

QUESTION 10: Do you consider that additional protections need to be introduced in Scotland in respect of the practice of vaginal elongation? Please explain your answer.

We think that the practice of vaginal elongation should be considered as FGM alongside other FGM practices when it is occurring at the behest of an adult third party in relation to a child or young person. In relation to adult women who are being forced to make this body modification then we think the Statutory Guidance should clearly recognise this as a form of domestic abuse.

In relation to consenting adults who have freely chosen this as a form of body modification the approach of the state should differ.

QUESTION 11: Do you have any evidence to suggest that individuals in Scotland have been subject to the practice of vaginal elongation?

We have no evidence of this to present.





QUESTION 12: Do you consider that additional protections need to be introduced in Scotland in respect of the practice of breast ironing? Please explain your answer.

We think that the practice of breast ironing should be considered as FGM alongside other FGM practices when it is occurring at the behest of an adult third party in relation to a child or young person.

In relation to adult women who are being forced to make this body modification then we think the Statutory Guidance should clearly recognise this as a form of domestic abuse.

In relation to consenting adults who have freely chosen this as a form of body modification the approach of the state should differ.

QUESTION 13: Do you have any evidence to suggest that individuals in Scotland have been subject to the practice of breast ironing?

We have no evidence of this to present.

QUESTION 14: Do you have views in relation to the place of cosmetic genital piercings in relation to protections and guidance?

We think that genital piercing should be considered as FGM alongside other FGM practices when it is occurring at the behest of an adult third party in relation to a child or young person.

In relation to adult women who are being forced to make this body modification then we think the Statutory Guidance should clearly recognise this as a form of domestic abuse.

In relation to consenting adults who have freely chosen this as a form of body modification the approach of the state should differ.





QUESTION 15: In relation to the issues covered within this consultation, are there any other points you would wish to make that are not already included under other answers?

SCRA feels strongly that the current legislative provisions allow for the protection of children and young people harmed by or at risk of FGM through the Children's Hearing System. We strongly support the introduction of Statutory Guidance which will clarify definitions and processes in relation to procedure and which will focus professionals on what victims, complainers and their families require in terms of support.

SCRA Practice & Policy Team 2018

