

Offences / Behaviours experienced by victims of Female Genital Mutilation (FGM)

| Examples of behaviour | Actor | Possible offences |
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| <p>There is evidence of an agreement to commit the offence of FGM. The substantive offence may or may not be carried out. Where it is carried out, and there is sufficient evidence, the substantive offence can be charged.</p> <p>Evidence of an agreement is usually proved by the circumstances and acts of the parties concerned, from which a jury may infer the agreement. For example:</p> <ul style="list-style-type: none"> • Contact between the parties, including persons outside the UK: phone calls, emails, texts, meetings, conversations (probe evidence). • Movement of the parties: cell site analysis; surveillance. • Travel or planned travel out the UK: passports; flight tickets and bookings; details of payment; flight manifests. • Arrangements for FGM procedure: diary entries, dates and notes of where and when the procedure is to take place. <p>Payment for procedure: money transfers; bank account records.</p> | <p>Parents / guardians or carers / relatives / cutter</p> | <p>Conspiracy to commit FGM (Inchoate offence), s1 Criminal Law Act 1977. S1A provides for conspiracy to commit a crime abroad, providing that the act constitutes an offence under the law of the other country.</p> |

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| <p>Where the substantive offence of FGM is not carried out, and there is insufficient evidence of an agreement to do so, there may be sufficient evidence of encouragement or assistance.</p> <p>For example, where a parent contacts a 'cutter' by phone, text, or email asking for the FGM procedure to be carried out.</p> <p>Similar evidence to that outlined above for Conspiracy should be sought.</p> | <p>Parents / guardians or carers</p> | <p>Inchoate offences of encouraging or assisting crime - ss44-46, Serious Crime Act 2007 (SCA). Extra-territorial jurisdiction is provided for under s53 and Schedule 4 of the Act, provided that the AG's consent is obtained.</p> |
| <p>Aiding and abetting an offence of FGM under s2 FGM Act 2003 can only be charged if:</p> <p>The person aids or abets a girl to excise infibulate or mutilate her own labia or clitoris etc. It is not an offence for the girl / woman to carry out the procedure on herself; however if she has been assisted or aided by someone else to carry it out on herself, e.g. someone else is present and assists her or supports her in performing the procedure, then they will be guilty. They do not actually have to carry out the "act" themselves but would need evidence that the FGM procedure had been carried out.</p> | <p>Parents / guardians or carers</p> | <p>S2 FGM Act 2003 A person is guilty of an offence if he aids, abets, counsels or procures a girl to excise, infibulate or otherwise mutilate the whole or any part of her own labia majora, labia minora or clitoris.</p> |

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| <p>Aiding and abetting an offence of FGM under s3 FGM Act 2003 can only be charged if:</p> <p>The person aids and abets a non UK national / resident to do a relevant FGM act outside the UK, to a UK national or resident. Here a person who, for example arranges for their daughter from the UK to have an FGM procedure carried out abroad by a foreign national (e.g. a cutter or a relative in Somalia) is guilty. Again, they do not have to carry out the act themselves, but they make the relevant arrangements; so evidence of phone calls, e-mails, skype, facebook for the procedure, booking flight tickets, transfer of money for the procedure, telling others (e.g. teacher) that the child is going "on holiday" etc. would support this offence.</p> | <p>Parents / guardians or carers</p> | <p>S3 FGM Act 2003 Offence of assisting a non-UK person to mutilate overseas a girl's genitalia.</p> <p>(1) A person is guilty of an offence if he aids, abets, counsels or procures a person who is not a United Kingdom national or permanent United Kingdom resident to do a relevant act of female genital mutilation outside the United Kingdom.</p> <p>(2) An act is a relevant act of female genital mutilation if —</p> <ul style="list-style-type: none"> (a) it is done in relation to a United Kingdom national or permanent United Kingdom resident, and (b) it would, if done by such a person, constitute an offence under section 1. <p>(3) But no offence is committed if the relevant act of female genital mutilation—</p> <ul style="list-style-type: none"> (a) is a surgical operation falling within section 1(2)(a) or (b), and (b) is performed by a person who, in relation to such an operation, is an approved person or exercises functions corresponding to those of an approved person. |
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| <p>Humiliation, intimidation, emotional blackmail, verbal abuse (telling a child that she must conform), being shouted at or sworn at Being persistently asked to accept that FGM should be performed with the verbal threat of violence, family exclusion and the repercussions of non-compliance with cultural requirements. Fear of possible forced marriage.</p> | <p>Parents / guardians or carers</p> | <p>S4 Public Order Act 1986 as distress is likely to be caused and assuming the incident does not take place in a dwelling.</p> <p>Provided it is a more than one incident, this action can be construed as harassment-consider s2 Protection from Harassment Act (PHA) 1997. See also s4 PHA 1997 causing someone to fear, on at least two occasions that violence could be used against them.</p> <p>S39 CJA 1988 Common Assault, this can be by beating or not by beating. There can be a physical threat of violence.</p> |
| <p>Being subjected to violence by family members. Punching, kicking, assault with a weapon resulting in possible breaking of the skin.</p> <p>GBH injuries include FGM, broken bones, wounding, visible disfigurement, injuries which cause substantial loss of blood and serious psychiatric injury.</p> | <p>Parents / guardians or carers</p> | <p>S39 CJA 1988 Common Assault, this can be by beating or not by beating. There can be a physical threat of violence.</p> <p>Actual Bodily Harm (ABH) Grievous Bodily Harm (GBH) [really serious bodily harm]</p> <p>Offences against the Person Act 1861 c. 100</p> <p>Acts causing or tending to cause Danger to Life or Bodily Harm</p> |

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| <p>Where a child has suffered 'serious physical harm' or death and there is sufficient evidence to show that the defendant either:</p> <ol style="list-style-type: none"> 1. caused the harm or death or; 2. <ol style="list-style-type: none"> i. was, or ought to have been aware that there was a significant risk of serious physical harm to the victim; ii. failed to take reasonable steps to protect the victim from the risk; and iii. the def foresaw or should have foreseen the kind of circumstances in which the act occurred. In these circumstances a prosecution may be brought under s5 DVCVA. <p>Injuries include FGM, broken bones, wounding, visible disfigurement, injuries which cause substantial loss of blood and serious psychiatric injury.</p> <p>[serious harm means harm that amounts to GBH]</p> | <p>Members of a victim's household who has frequent contact with the victim. This could include but is not limited to parents/guardians or carers.</p> | <p>S5 Domestic Violence Crime and Victims Act (DVCVA) 2004 as amended by DVCVA 2012.</p> |
| <p>Making a child sleep in the bath tub, forcing a child to take cold baths in extreme weather conditions, child being held under water, and being tied up.</p> | <p>Parents / guardian / carers</p> | <p>Child Cruelty ABH</p> |
| <p>Being forced to fast for days with no food and water.</p> | <p>Parents / guardian / carers</p> | <p>Child Cruelty</p> |

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| Isolation & deprivation of contact; withdrawal of services or supportive services (Deprivation of medical attention or going to school etc); the child not allowed to eat with the family, to associate with the family, to share a room or have any physical contact with anyone. Child prevented from playing with and interacting with others as a result of being branded. | Parents / carers / friends / family | Child Cruelty Possible False Imprisonment |
| Impairment of physical, intellectual, emotional, social or behavioral development due to all the above. | | |

Definition of Child Abuse - *'Working Together to Safeguard Children – A guide to inter-agency working to safeguard and promote the welfare of children 2006'*

“Abuse and neglect are forms of maltreatment of a child. Somebody may abuse or neglect a child by inflicting harm, or by failing to act to prevent harm. Children may be abused in a family or in an institutional or community setting, by those known to them or, more rarely, by a stranger. They may be abused by an adult or adults, or another child or children.”

Physical abuse

Physical abuse may involve hitting, shaking, throwing, poisoning, burning or scalding, drowning, suffocating, or otherwise causing physical harm to a child. Physical harm may also be caused when a parent or carer fabricates the symptoms of, or deliberately induces, illness in a child.

Emotional abuse

Emotional abuse is the persistent emotional maltreatment of a child such as to cause severe and persistent adverse effects on the child's emotional development. It may involve conveying to children that they are worthless or unloved, inadequate, or valued only

insofar as they meet the needs of another person. It may feature age or developmentally inappropriate expectations being imposed on children. These may include interactions that are beyond the child's developmental capability, as well as overprotection and limitation of exploration and learning, or preventing the child participating in normal social interaction. It may involve seeing or hearing the ill-treatment of another. It may involve serious bullying, causing children frequently to feel frightened or in danger, or the exploitation or corruption of children. Some level of emotional abuse is involved in all types of maltreatment of a child, though it may occur alone.

Sexual abuse

Sexual abuse involves forcing or enticing a child or young person to take part in sexual activities, including prostitution, whether or not the child is aware of what is happening. The activities may involve physical contact, including penetrative (e.g. rape, buggery or oral sex) or non-penetrative acts. They may include non-contact activities, such as involving children in looking at, or in the production of, sexual online images, watching sexual activities, or encouraging children to behave in sexually inappropriate ways.

Offences of child cruelty, neglect and violence

Section 1 Children and Young Persons Act 1933 provides that any person who has attained the age of sixteen years and has responsibility for any child or young person under that age, wilfully assaults, ill-treats, neglects, abandons or exposes him, or causes or procures him to be assaulted, ill-treated, neglected, abandoned, or exposed, in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement) that person shall be guilty of a misdemeanour.

The definition of neglect includes failure to provide adequate food, clothing, medical aid or lodging and, in respect of suffocation, where the cause of death for an infant under 3 years is suffocation (but not caused by disease or the presence of a foreign body in the throat or air passages) while the infant was in bed with some other person who has attained the age of 16 years, that other person shall, if he was, when he went to bed, under the influence of drink, be deemed to have neglected the infant in a manner likely to cause injury to its health.

Neglect

Neglect is the persistent failure to meet a child's basic physical and/or psychological needs, likely to result in the serious impairment of the child's health or development. Neglect may occur during pregnancy as a result of maternal substance abuse.

Once a child is born, neglect may involve a parent or carer failing to: provide adequate food, clothing and shelter (including exclusion from home or abandonment); protect a child from physical and emotional harm or danger; ensure adequate supervision (including the use of inadequate care-givers); ensure access to appropriate medical care or treatment. It may also include neglect of, or unresponsiveness to, a child's emotional needs

Section 4A Public Order Act 1986

Section 4A carries a greater penalty than section 5 and is intended for the more directed and persistent type of behaviour required to prove the elements of intent and causation. The evidence of intention may be inferred from the targeting of a vulnerable victim.

Because it carries an equal penalty to section 4, it may also be considered appropriate for violent conduct beyond the scope of that normally considered appropriate to section 5.

Where the conduct is directed towards an individual and is so persistent that a restraining order should be sought, then proceedings under section 2 or section 4 of the Protection from Harassment Act 1997 should be considered preferable to available offences under the Public Order Act 1986.

Threatening behaviour is described as threatening, abusive or insulting words or behaviour towards another person in a public or private place (but not when confined to a dwelling house) either:

- with intent to cause that person to believe that immediate unlawful violence will be used against him or another by any person or:
- with intent to provoke the immediate use of unlawful violence by that person or another or:
 - whereby that person is likely to believe that such violence will be used or:
 - it is likely that such violence will be provoked.

ASSAULT

Common Assault - contrary to section 39 Criminal Justice Act 1988

An offence of Common Assault is committed when a person either assaults another person or commits a battery.

An assault is committed when a person intentionally or recklessly causes another to apprehend the immediate infliction of unlawful force.

A battery is committed when a person intentionally and recklessly applies unlawful force to another.

It is a summary offence which carries a maximum penalty of six months' imprisonment and/or a fine not exceeding the statutory maximum. However, if the requirements of section 40 of the Criminal Justice Act 1988 are met, then Common Assault can be included as a count on an indictment. Refer to summary offences and the Crown Court (Criminal Justice Act 1988, sections 40 and 41; Crime and Disorder Act 1998 section 51 and Schedule 3 paragraph 6 elsewhere in this guidance).

Where there is battery the defendant should be charged with 'assault by beating' (DPP v Little (1992) 1 All ER 299).

Assault occasioning actual bodily harm, contrary to section 47 Offences Against the Person Act 1861 Refer to (Archbold 19-190) for the law.

The offence is committed when a person assaults another, thereby causing actual bodily harm. Bodily harm has its ordinary meaning and includes any hurt calculated to interfere with the health or comfort of the victim: such hurt need not be permanent, but must be more than transient and trifling: (R v Donovan 25 Cr. App. Rep. 1, CCA). It is an either way offence, which carries a maximum penalty on indictment of five years' imprisonment and/or an unlimited fine not exceeding the statutory maximum.

As stated above, the factors in law that distinguish a charge under section 39 from a charge under section 47 are the degree of injury resulting and the sentencing powers available to the sentencing court. For instance: where common assault will be the appropriate charge. Where the injuries exceed those that can suitably be reflected by a common assault a charge of assault occasioning actual bodily harm should normally be preferred. By way of example, the following injuries should normally be prosecuted under section 47: loss or breaking of tooth or teeth; temporary loss of sensory functions, which may include loss of

consciousness. (T v Director of Public Prosecutions, [2003] Crim. L. R. 622) extensive or multiple bruising; displaced broken nose; minor fractures; minor, but not merely superficial, cuts of a sort probably requiring medical treatment (e.g. stitches); psychiatric injury that is more than mere emotions such as fear, distress or panic. In any case where psychiatric injury is relied upon, as the basis for an allegation of assault occasioning actual bodily harm, and the matter is not admitted by the defence, then expert evidence must be called by the prosecution (R v Chan-Fook, 99 Cr. App. R. 147, CA).

A verdict of assault occasioning actual bodily harm may be returned on proof of an assault together with proof of the fact that actual bodily harm was occasioned by the assault.

S20 Unlawful wounding/inflicting grievous bodily harm

The offence is committed when a person unlawfully and maliciously, either wounds another person; or inflicts grievous bodily harm upon another person.

It is an either way offence, which carries a maximum penalty on indictment of five years' imprisonment and/or an unlimited fine. Summarily, the maximum penalty is six months' imprisonment and/or a fine not exceeding the statutory maximum.

Wounding means the breaking of the continuity of the whole of the outer skin, or the inner skin within the cheek or lip. It does not include the rupturing of internal blood vessels (Archbold 19-212).

An offence contrary to section 20 should be reserved for those wounds considered to be serious (thus equating the offence with the infliction of grievous, or serious, bodily harm under the other part of the section).

Grievous bodily harm means serious bodily harm (Archbold 19-206). It is for the jury to decide whether the harm is serious. However, examples of what would usually amount to serious harm include: injury resulting in permanent disability or permanent loss of sensory function; injury which results in more than minor permanent, visible disfigurement; broken or displaced limbs or bones, including fractured skull; compound fractures, broken cheek bone, jaw, ribs, etc; injuries which cause substantial loss of blood, usually necessitating a transfusion; injuries resulting in lengthy treatment or incapacity; psychiatric injury. As with assault occasioning actual bodily harm, appropriate expert evidence is essential to prove the injury.

The prosecution must prove under section 20 that either the defendant intended, or actually foresaw, that the act might cause some harm. It is not necessary to prove that the defendant either intended or foresaw that the unlawful act might cause physical harm of the gravity described in section 20. It is enough that the defendant foresaw some physical harm to some person, albeit of a minor character, might result: (R v Savage; DPP v Parmenter [1992] 1 A.C 699).

S18 Wounding/causing grievous bodily harm with intent

The offence is committed when a person unlawfully and maliciously, with intent to do some grievous bodily harm, or with intent to resist or prevent the lawful apprehension or detainer of any other person, either: wounds another person; or causes grievous bodily harm to another person.

It is an indictable only offence, which carries a maximum penalty of imprisonment for life..

The distinction between charges under section 18 and section 20 is one of intent.

Factors that may indicate the specific intent include: a repeated or planned attack; deliberate selection of a weapon or adaptation of an article to cause injury, such as breaking a glass before an attack; making prior threats; using an offensive weapon against, or kicking the victim's head.

Inchoate Offences

An inchoate offence is where a substantive offence may not have been completed but nonetheless an offence of a different kind has been committed because of the actions or agreements in preparation for the substantive offence.

Encouraging or Assisting Crime

The Serious Crime Act 2007 (SCA) inchoate offences of encouraging or assisting crime (ss 44-46) can be used where it is not possible to charge someone as a secondary party. SCA charges may be used, for example, where no substantive offence is committed and secondary liability does not arise, or where D does an act capable of encouraging or assisting P, even if the act does not in fact provide encouragement or assistance. An example is where D communicates with another (eg in person or by phone, email or letter), encouraging the other person to commit an offence or a number of offences, such as FGM. D performs the

conduct element of a SCA offence by the act of encouragement via the communication, regardless whether the other person receives the communication or acts upon it.

Attempting to commit an offence

An attempt is an offence of specific intent. It requires an intention to commit an offence to which section 1(4) Criminal Attempts Act 1981 applies. A person is guilty of attempting to commit an offence if s/he does an act which is more than preparatory to the commission of the offence with the intention of committing an offence. You would need to ascertain whether the accused has gone sufficiently far towards the full offence to have committed the 'act' of the attempt. If the accused has passed the preparatory stage the offence of attempt has been committed and it is no defence that s/he withdrew from committing the completed offence.

Conspiracy

The main element of the crime of conspiracy is the agreement by two or more people to carry out a criminal act. Even if nothing is done in furtherance of the agreement, the offence of conspiracy is complete. The act must involve spoken or written words or other overt acts and there must be an agreement to commit the criminal offence.

Where the conspiracy to commit an offence takes place outside England and Wales and it is an offence in that other jurisdiction, section 1A Criminal Law Act 1977 provides that where (a) that act or event would be an offence by law of that other country and (b) it would also be an offence here (but for the fact that it takes place outside the jurisdiction) then a person in England and Wales can be charged with conspiracy.

Please note the consent of the Attorney General is required to prosecute offences to which section 1A applies.

Other Criminal Offences of assault, abduction, kidnapping, cruelty/neglect

Section 1 Child Abduction Act 1984 as amended by the Children Act 1989. (DPP consent is required) which covers offences committed by a parent, guardian or other person who is connected with the child under the age of sixteen, with a view to removal from the United Kingdom. It can also be used for a person who aids and abets the abduction.

Section 2 Child Abduction Act 1984 or s.49 Children and Young Persons Act 1989 for those breaching Child Abduction Warning Notice, or for any other offences committed in relation to that child

Kidnapping under common law comprising the taking or carrying away of one person by another, by force or fraud, without the consent of the person so taken or carried away and without lawful excuse. It is punishable by fine or imprisonment or both. The absence of the child's consent will be material in any kidnapping case, whatever the child's age. Younger children will not have the understanding or intelligence to give consent, so that the absence of consent will be a necessary inference from the child's age.

Section 1 Children and Young Persons Act 1933 - offences of child cruelty, provides that any person who has attained the age of sixteen years and has responsibility for any child or young person under that age, wilfully assaults, ill-treats, neglects, abandons or exposes him, or causes or procures him to be assaulted, ill-treated, neglected, abandoned, or exposed, in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement).

Civil Protection Orders

Section 46 of the Children Act 1989 permits a police officer, who has reasonable cause to believe that a child is at risk of significant harm, to remove the child to a place of safety, or to prevent the child from being removed from somewhere the child is safe e.g. a hospital.

Section 44 of the Children Act 1989 enables the court to grant an Emergency Protection Order (EPO) to secure the immediate safety of a child by removing the child to a place of safety, or by preventing the child's removal from a place of safety.

Child Abduction Warning Notices (formerly known as Harbourers Warning Notices) are a useful tool enabling the police to disrupt the criminal or undesirable activities of adults who are associating with young people against the wishes of the young persons' parent(s) or local authority carer. The Notices tend to be used where arrest/prosecution for any substantive offences is not available or is not appropriate at that time.