



**Protocol on the handling of Female Genital Mutilation (FGM) offences between the National Police Chiefs’ Council and the Crown Prosecution Service**

**This protocol has been approved and authorised by:**

**…………………………..**

**Chief Police Officer [insert Police Area]**

**…………………………..**

**Chief Crown Prosecutor [insert CPS Area]**

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**1. SECTION 1 – PARTIES**

* 1. The Parties to this Protocol are XXXX Police and the XXXX Crown Prosecution Service (CPS).

1.2 The successful prosecution of these cases and safeguarding of those victims involved; relies on strong and collaborative partnership working between the police and prosecutors. The police will be proactive in collating all relevant evidence and the CPS will be clear and informative about what (if any) further evidence is needed.

**2. SECTION 2 – INTRODUCTION AND SCOPE OF THE PROTOCOL**

2.1 The commitment to end Female Genital Mutilation (FGM) is embedded in the cross-government [Ending Violence against Women and Girls (VAWG) Strategy: 2016 to 2020](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522166/VAWG_Strategy_FINAL_PUBLICATION_MASTER_vRB.PDF). The strategy is underpinned by effective partnership working at both a local and national level.

2.2 The VAWG approach acknowledges VAWG as a fundamental abuse of human rights and women’s rights[[1]](#footnote-1). The UK government has signed and ratified the United Nations call to all states to prevent and respond to violence against women[[2]](#footnote-2).

2.3 Chief Constables who are members of the National Police Chiefs’ Council (NPCC) have overall responsibility for the investigation of alleged criminal activity in their individual force area. The NPCCs [National HBA Delivery Plan](http://scanmail.trustwave.com/?c=7089&d=-aWh22b4Y4SDzyWdOskeoWuVXGu_JD5juxTeVBxzDA&u=http%3a%2f%2fwww%2enpcc%2epolice%2euk%2fdocuments%2fhonour%2520based%2epdf) states that the police service’s vision remains nothing less than the total eradication of HBA (which includes Violence), FM and FGM.

2.4 The CPS is the principal prosecuting authority dealing with criminal prosecutions in England and Wales.

2.5 This document sets out the principles governing the investigation and prosecution of any FGM offences.

The objectives of this protocol are:

• To achieve improved and consistent performance in the investigation and prosecution of FGM;

• To improve the service to victims of FGM;

• Increase public confidence in the Police Service and CPS response to FGM and;

• To reflect NPCC and CPS policy.

**3. SECTION 3 – BACKGROUND**

***Definition***

3.1 FGM is a procedure where the female genital organs are injured or changed and there is no medical reason for this. It is frequently a very traumatic and violent act for the victim and can cause harm in many ways. The practice can cause severe pain and there may be immediate and/or long-term health consequences, including mental health problems, difficulties in childbirth, causing danger to the child and mother; and/or death.

3.2 FGM has been classified by the World Health Organisation (WHO) into four types:

* Type 1 – Clitoridectomy: partial or total removal of the clitoris (a small, sensitive and erectile part of the female genitals) and, in very rare cases, only the prepuce (the fold of skin surrounding the clitoris);
* Type 2 – Excision: partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora (the labia are the ‘lips’ that surround the vagina);
* Type 3 – Infibulation: narrowing of the vaginal opening through the creation of a covering seal. The seal is formed by cutting and repositioning the inner, or outer, labia, with or without removal of the clitoris; and
* Type 4 – Other: all other harmful procedures to the female genitalia for non-medical purposes, e.g. pricking, piercing, incising, scraping and cauterising the genital area.

3.3 Excision and infibulation are examples of what constitutes mutilation for the purpose of the 2003 Act but the term “mutilate” is not defined in the Act. The interpretation of the legislation, including whether a particular procedure amounts to mutilation, is a matter for the criminal courts to determine in cases brought before them. In the absence of any conviction for FGM, there is currently no criminal case law on what does or does not amount to mutilation for the purpose of the 2003 Act.

***Legislation***

3.4 In England and Wales, criminal and civil legislation on FGM is contained in the Female Genital Mutilation Act 2003 (“the 2003 Act”). Information on the FGM Act can be found within Chapter 3 of the [Multi-Agency Statutory Guidance on FGM](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/512906/Multi_Agency_Statutory_Guidance_on_FGM__-_FINAL.pdf).

3.5 The 2003 Act was amended by the Serious Crime Act 2015 by:

* extending the scope of extra-territorial jurisdiction over offences of FGM committed abroad by UK nationals and those habitually (as well as permanently) resident in the UK);
* granting victims of FGM lifelong anonymity;
* introducing a new offence of failing to protect a girl from risk of FGM;
* introducing a mandatory reporting duty which requires specified professionals to report known cases of FGM in under 18s to the police; and
* introducing civil FGM Protection Orders (FGMPOs).

3.6 It is important to note that the legislation is silent on whether or not a crime was committed for cultural reasons, except in section 1(5) where it states: *For the purpose of determining whether an operation is necessary for the mental health of a girl it is immaterial whether she or any other person believes that the operation is required as a matter of custom or ritual.* There are only two exceptions where an offence is not committed under s. 1(1) of the 2003 Act[[3]](#footnote-3) and that is when an “approved person” (defined in s. 1(3)) performs a surgical operation which is either necessary for the girl’s physical or mental health; or is performed on a girl who is in labour or has just given birth for purposes connected with birth or labour.

3.7 Other useful information:

***Police:*** [College of Policing’s Authorised Professional Practice regarding FGM](https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/female-genital-mutilation/), [NPCC National Vulnerability Action Plan](http://scanmail.trustwave.com/?c=7089&d=-aWh22b4Y4SDzyWdOskeoWuVXGu_JD5ju0TfBEooCA&u=http%3a%2f%2fwww%2enpcc%2epolice%2euk%2fdocuments%2fPDF%20National%20Vulnerability%20Action%20Plan%20v1%2013Sep17%2epdf). Officers should also liaise with their force and regional area FGM lead who can advise on relevant guidance and toolkits that may also assist when handling these cases.

***CPS*:** [Toolkit for Prosecutors on VAWG Cases Involving Vulnerable Victims](https://www.cps.gov.uk/publication/toolkit-prosecutors-violence-against-women-and-girls-cases-involving-vulnerable-victims), [Guidelines on prosecuting cases involving communications sent via social media](https://www.cps.gov.uk/legal-guidance/guidelines-prosecuting-cases-involving-communications-sent-social-media), [Achieving Best Evidence in criminal proceedings](https://www.cps.gov.uk/sites/default/files/documents/publications/best_evidence_in_criminal_proceedings.pdf)

***Government:*** [Multi-agency statutory guidance on FGM](https://www.gov.uk/government/publications/multi-agency-statutory-guidance-on-female-genital-mutilation), [FGM guidance for healthcare staff](https://www.gov.uk/government/publications/fgm-mandatory-reporting-in-healthcare)

**SECTION 4 - INVESTIGATION AND RISK ASSESSMENTS**

4.1 There must be early consultation between the police and CPS, the timing of which will be determined by the circumstances of each case. This will focus on building strong cases for prosecution from the outset.

4.2 The function of the CPS is not to presume guilt or decide a suspect is guilty, or automatically believe a complainant; it is to make fair, independent and objective assessments about the evidence. CPS prosecutors have a continuing duty to review cases that have been referred to us and charged. There are checks and balances throughout the process which are designed to identify and address issues before a trial, or stop a case when that’s appropriate.

4.3 The named FGM leads for the police and CPS will work together to ensure that the investigation and prosecution of FGM is coordinated effectively between agencies (i.e. voluntary sector, education, social care and health).

4.4 The investigative team should include an officer who has been trained, or has awareness of FGM, who will remain attached to the case until the conclusion of the enquiry and any subsequent court proceedings. Key witness statements will be taken by the investigative team.

4.5 As well as testing the complainant’s account, the police should explore the role and behaviour of the suspect in order to ensure a balanced consideration of the accounts provided ensuring that all available evidence is gathered:

* How plausible and consistent is the suspect’s account? What counter allegations, if any, have been made?
* Were there any signs of injury to the suspect upon arrest (see [domestic abuse guidelines on dealing with self-defence and/or counter-allegations](https://www.cps.gov.uk/legal-guidance/domestic-abuse-guidelines-prosecutors#a13))?
* Were there any allegations made of any other non-violent behaviour that fall within the definition of domestic abuse[[4]](#footnote-4)?
* Are there any contradictions in the suspect’s account?
* Has the suspect made no comment during interview from which an adverse inference can be drawn?

4.6 The [Joint NPCC and CPS Domestic Abuse Evidence Checklist](https://www.cps.gov.uk/sites/default/files/documents/publications/npcc_cps_joint_evidence_gathering_checklist_2015.docm) will also be relevant in FGM cases and should be referred to.

4.7 The range of offending behaviour, with particular reference to other crimes, needs to be considered, such as forced marriage (FM) and rape[[5]](#footnote-5). Ultimately, prosecutors should be alert to the fact that a suspect will follow a course of conduct which is used to control, coerce, dominate or exploit a complainant.  Identification of the triggers for abuse will assist in understanding the context of the offending. These issues should be considered as risk factors, rather than as causal links to the offending behaviour, and will assist prosecutors in their consideration of the public interest.  This will also assist when considering factors to be taken into account for bail applications and/or terms for restraining orders at later stages of the prosecution process.

4.8 Any medical examination of the complainant will take place at the earliest opportunity in a dedicated examination suite to ensure the most effective complainant care and the integrity of evidence. The specific requirements of complainants with additional needs will always be considered. This may include assistance with transport or the use of interpreters etc.

4.9 The medical examination of the complainant should be carried out by a paediatrician with the relevant skills (very often in a specialist paediatric FGM clinic or a dedicated clinic seeing children in a SARC). Whilst the options vary nationally, the SARC national network has some form of paediatric service on offer to examine children or Young People who are complainant’s of sexual violence will have the skills to see children who have undergone FGM. Where practicable the wishes of the complainant will be taken into account and adhered to in terms of the gender and or ethnicity of the Forensic Medical Examiner (FME) or Forensic Nurse Practitioner (FNP).

4.10 It is recommended the initial examination is visually recorded and captured on DVD or CD and includes the use of the colposcope which is used in the SARC. This will then be a visual record of the examination which can be made available to the medical expert and the defence in the event of any subsequent trial. The disc is encrypted and forms part of the notes of the medical examination. It is extremely important that the recording is of good quality. This recording should accompany full and detailed notes of the medical examination[[6]](#footnote-6). Recording the initial examination may reduce the distress caused to the complainant as they may only need one examination if the initial one is recorded.

4.11 The police will provide the forensic service provider with a copy of the complainant’s statement or a note of their visually recorded interview (MG15 ROVI) and with any MG3 provided by CPS to inform the analysis of forensic submission.

4.12 A second opinion may be required to confirm FGM for the purposes of prosecution. The police will, as soon as is reasonably practicable, provide the recommended expert with all relevant material, including any photographic or video evidence to inform their assessment. Please see [section 5 on instructing medical experts.](#Section5)

4.13 A clear and coherent account from the complainant is reliant upon their powers of recall/concentration, their cognition of the events and their ability to communicate. A number of issues can impact on the precision or the detail of the account provided e.g. drug and alcohol use, mental health and physical disabilities. Police and prosecutors should refer to the [Toolkit for Prosecutors on VAWG Cases Involving Vulnerable Victims](https://www.cps.gov.uk/publication/toolkit-prosecutors-violence-against-women-and-girls-cases-involving-vulnerable-victims).

4.14 The safety of complainants is paramount. A complainant’s family and/or members of their community may go to great lengths to discover their whereabouts once a crime has been reported. The risks to the complainant from her entire family, the suspect’s family and the community should be considered in such cases; not just the direct risk of the immediate suspect(s) on the complainant. There is evidence that the risks to the complainant increase after they have engaged with the police service. In addition the risks also extend to others who may have assisted or otherwise supported the complainant and these need to be considered by the police e.g. siblings or undisclosed partner.

4.15 In most cases the police will establish whether a witness is in fear and should inform the prosecutor. Ideally, a discussion about the type of 'protection' that should be applied for will take place between the police and the prosecutor at the pre charge stage. In some very serious cases witness protection will be necessary. Prosecutors should refer to the [Witness Protection and Anonymity Legal Guidance](https://www.cps.gov.uk/legal-guidance/witness-protection-and-anonymity#a07).

4.16 The police will ensure that the Domestic Abuse, Stalking and HBV risk assessment (DASH)[[7]](#footnote-7) is used to assess the risk to the complainant and inform the development of safeguarding plans in relation to the complainant. First response staff and their supervisor should identify risk factors, who is at risk and decide what level of intervention is required.

4.17 Police must ensure they ask the complainant about the abusers behaviour in all cases of FGM. The risk identification process must remain on-going. Events and circumstances may undergo rapid and frequent change hence resulting in increases to the risk of the complainant. The assessment must be kept under constant review. High risk cases may well require a multi-agency response and should be considered for referral to the relevant risk management panel i.e. the multi-agency risk assessment Conference (MARAC) and/or multi-Agency public protection panel (MAPPA).

4.18 Police and prosecutors should be aware that suspects may take complainants of FGM abroad to commit these crimes, they may be aware that the police and prosecutorial response is weak or non-existent in these other countries. Given the international nature of these crimes, early discussions with the extradition team at CPS Headquarters may assist. Information on the CPS extradition unit can be found on the internal CPS casework and knowledge hub.

4.19 In the majority of cases complainants will be children. Police and Prosecutors should refer to the [Safeguarding Children as Victims and Witnesses](https://www.cps.gov.uk/legal-guidance/safeguarding-children-victims-and-witnesses) guidance.

**5. SECTION 5 – INSTRUCTIONS FOR MEDICAL EXPERTS**

5.1 The police would normally contact an expert directly to instruct them to provide a report / evidence on the injury, the expert would also be sent the DVD/CD recording of the initial examination (where possible). However, the National Crime Agency’s Major Crime Investigation Support Unit[[8]](#footnote-8) hold and maintain a list of advisers in a range of areas including medical to support a criminal investigation. They do not accredit but suggest based on operational and court experience, and can provide feedback if required.

The following points must be considered when providing instructions to ensure that all relevant points are covered in the report / statement to enable a charging decision to be made:

* Case law is clear that, where possible, it should not be the attending clinician who should be instructed as the expert. However there are some FGM experts who are also clinicians in which case they can be used.
* The expert must be instructed to give ‘an expert opinion’ about the nature of any injury, including in the context of any history provided by or on behalf of the complainant.
* Include the qualifications of the expert in the report / statement with particular reference to their expertise in relation to FGM.
* Specific and detailed expert evidence is required on the findings, for example, how many transections or cuts there are, where do the cuts arise and depth of cuts where relevant as well as the age and type of the injuries, force and mechanism used including type of implement, if possible, and to opine whether this procedure was necessary.
* Provide a prognosis and any further surgery / treatment that may be required.
* Provide diagrams and images where appropriate.
* Experts should not be asked or be expected to expand on further detail beyond the actual injury caused in the case, e.g. it is not necessary to detail the incidence of FGM in any country, or the particular type of FGM performed there.
* If the initial examination hasn’t been recorded then any examination required by an expert should be filmed and relevant photographs taken as well as detailed. This will obviate the need for a further examination, for example by the defence.

5.2 The CPS will usually include the expert who gives a second opinion in the conference with the prosecutor, trial advocate and the investigating officer (IO) unless there are particular reasons for not doing so. It is also likely that the expert will be called as a live witness at trial.

5.3 Wherever possible, if a medical expert is to appear in court, they should be given as much notice and as precise a time slot as possible. The majority of experts will have clinics to attend to and as such will want to avoid cancelling scheduled appointments at last minute.

**6. SECTION 6 – REFERRAL, CHARGING AND DISCLOSURE**

6.1 To facilitate effective referral and charging practices between the police and the CPS, all police forces, and all CPS areas will appoint Leads for FGM cases. A list of the Leads will be contained as a separate annex for police forces and the CPS which will be held with the CPS and NPCC, FGM Policy Leads. There must be early consultation between the police and CPS. This will focus on building strong cases for prosecution from the outset, ensuring that all possible avenues of evidence are explored and that the correct charge is identified. CPS Areas must alert Senior Area Managers and CPS HQ of all FGM cases within 24 hours of being made aware of them at pre-investigative stage. Early notification and brief details from the police will be required to facilitate this. The police will provide on-going updates on:

* results of enquiries following early investigative advice;
* further information and evidence; and
* complainant issues – including FGM Protection Orders (see [section 7 on FGMPOs below](#Section7)).

6.2 Early consultations need not be restricted to cases where there is already an identifiable suspect or that pass the threshold test. They may take place in any case where the early involvement of a prosecutor would assist in the gathering of relevant evidence, the questions to be asked of suspects, any pre-charge court procedures and any strategy for a likely prosecution. A brief written record of the consultation will be made by the prosecutor.

6.3 The Police will ensure that any statements supplied to the prosecutor at the pre-charge stage contain the witness’s details on the reverse of the MG11 and where required will be accompanied by a completed MG2 to ensure that any requirement for special measures receives early informed consideration. Where a witness has provided a visually recorded interview, an MG2 will be completed and supplied to the prosecutor as a matter of course.

6.4 Unless the circumstances require the application of the threshold test, the police will provide the CPS lead responsible for making the charging decision with an evidential report containing the following:

* + All key witness statements including medical and forensic;
  + Visually recorded witness interviews and accompanying ROVIs;
  + All key documentary exhibits;
  + Record of suspect's interview;
  + Any unused material which undermines the prosecution case or may assist the case for the accused including items relating to the complainant's credibility;
  + Any third party material that is available including social services' records;
  + Previous convictions of any suspect, complainant and witnesses.

6.5 The CPS Area FGM lead will provide a provisional assessment of the case, lines of further enquiry. Identification of the likely charges and of the evidence required to support them. They will be proactive in identifying, and where possible rectifying, evidential deficiencies and in bringing to an early conclusion those cases that cannot be strengthened by further evidence. Consultation will be face to face wherever possible. In exceptional circumstances a telephone consultation may be considered.

6.6 Reasons for delays in obtaining further information and evidence should also be notified to the CPS. Where relevant, the CPS will elevate actions to more senior officers to expedite.

6.7 No decisions to charge a case or advise on no further action (NFA) should be made without referral to the CPS or without the authority of the Director of Public Prosecutions (DPP). All cases of FGM must be recorded on the sensitive case list.

6.8 Where the CPS Area FGM Lead considers there is not enough evidence to proceed to charge but that further evidence could be obtained, they will provide investigative advice identifying all steps and evidence that may be undertaken to provide a realistic prospect of conviction, including the completion of a detailed action plan with agreed action dates on form MG3.

6.9 The CPS Area FGM Lead will ensure:

* The DASH has been applied by the police, and used to inform decisions regarding bail or remand as well as to inform safeguarding plans in relation to the complainant.
* The domestic abuse Joint NPCC and CPS Evidence Gathering Checklist has been completed.
* The MG3s contains a full record of the decisions taken with reasons for those decisions.
* Every MG3 contains an Action Plan (unless there is no additional or outstanding work required from the police). Dates will be agreed between the police and the CPS on the Action Plan.

6.10 Any decision not to prosecute an allegation of FGM or to prefer a lesser or another charge will be confirmed by the CPS Area FGM Lead.

6.11 The IO or disclosure officer and the CPS lead will handle unused material in accordance with the Criminal Procedure and Investigations Act (CPIA) 1996 as amended, the relevant Code of Practice, the Attorney General's guidelines on disclosure and the [Disclosure Manual](https://www.cps.gov.uk/legal-guidance/disclosure-manual).

6.13 The Police will ensure that the IO or disclosure officer is adequately trained on CPIA procedure.

6.14 The IO or disclosure officer and the CPS Area FGM Lead will be proactive in identifying relevant third party material at the pre-charge stage. Access to third party material will be sought prior to the decision to charge wherever possible.

6.15 In respect of cases involving child complainants access to and exchange of third party material held by a local authority will be dealt with in accordance with local protocols developed and agreed between the Police and CPS and the Local Authorities, as soon as reasonably practicable.

6.16 The CPS Area FGM Lead will make an application to the Court for a witness summons in respect of third party material where appropriate.

**7. SECTION 7 – PROTECTION ORDERS**

7.1 Where a girl or woman may be at risk of FGM, legal interventions should be considered, including police protection, an Emergency Protection Order (EPO) an FGM PO and/or other appropriate orders or applications. Relevant orders will be determined by what is appropriate in each case; sometimes a combination of orders might be needed, for example:

* EPO which gives local authority parental responsibility for the child;
* Prohibited Steps Order which prevents the family from removing a child from the country; or
* Police Protection Order which enables the police to remove a child to a place of safety for up to 72 hours.

7.2 A FGMPO is a civil order issued under the 2003 Act and can be made with the purpose of protecting a girl[[9]](#footnote-9) against the commission of an FGM offence – protecting a girl at risk – or protecting a girl against whom an FGM offence has been committed. An application for an FGMPO can be made to the family court or High Court. In deciding whether to make an order a court must have regard to all the circumstances of a case including the need to secure the health, safety and well-being of the potential or actual complainant. The terms of an FGMPO may relate to conduct inside and/or outside of England and Wales (or Northern Ireland). The orders may contain prohibitions, restrictions or requirements as the court considers appropriate to stop or change the behaviour or conduct of those who would seek to subject a girl to FGM or have already arranged for, or committed, FGM. For example, the court may:

* order the surrender of passports or any other travel documents, including the documents of the girl to be protected;
* order the return of a girl who is currently abroad;
* prohibit specified persons from entering into any arrangements in the UK or overseas for FGM to be performed on the person to be protected;
* include terms which relate to the conduct of the individuals named in the order within or outside of England and Wales; and
* include terms which cover individuals who are, or may become involved in other respects who may commit or attempt to commit FGM against a girl.

7.3 An application for an FGMPO[[10]](#footnote-10) can be made to the High Court or the family court by the person to be protected (the complainant), or a “relevant third party” (a person or body specified, or in a class specified by the Lord Chancellor for this purpose) without the leave of the court. Local authorities have been specified as a “relevant third party”. An application can also be made by ‘any other person’ with the leave of the court. In deciding whether to grant leave, the court must have regard to all the circumstances, including the applicant’s connection with, and knowledge of, the circumstances of the girl.

7.4 A court can also make an FGMPO without application being made to it in certain family proceedings. In addition, a criminal court can also make an FGMPO, without application, in criminal proceedings for a genital mutilation offence where the person who would be a respondent to any proceedings for an FGMPO is a suspect in the criminal proceedings. An FGMPO can be made in such criminal proceedings to protect a girl at risk, whether or not they are the complainant of the offence in relation to the criminal proceedings. For example, the younger sister of the complainant of a genital mutilation offence could also be protected by the court in criminal proceedings.

7.5 Breach of a FGMPO can be dealt with either in a criminal court or in a civil court. If the breach has been heard in a civil court then it is not possible to prosecute the same breach through the Criminal Justice System (CJS). When the breach is dealt with in the criminal court, breach of the FGMPO should be treated in the same way as a prosecution of any other breach of an order for example, a breach of a non-molestation order.

7.6 Prosecutors will inform the police if a restraining order is granted by the court. The police will promptly inform the complainant of the full details of any restraining order and where appropriate also share these with any specialist agency and the probation service.

**8. SECTION 8 – CASE PREPARATION**

8.1 Prosecutors should work closely with the police and other specialist agencies to ensure that the best evidence is gathered and presented to the court. The case should have a clear narrative pre-empting and challenging any assumptions/associated myths and stereotypes. A strong, coordinated prosecution team is required to proactively build and manage a case.

8.2 A conference with the trial advocate, the CPS Area FGM Lead, the IO, CPS caseworker, the FP and expert (where appropriate) should be held in every FGM case as soon as practicable after the advocate has received instructions.

8.3. If the suspect pleads not guilty, the full evidential file sent by the police should meet the national file standard and include:

* The complainant’s views on an application for a FGMPO or restraining order; and
* Confirmation that the police have discussed the proposed terms of a FGM PO and/or a restraining order with complainant and a draft FGMPO/restraining order setting out proposed conditions tailored to complainant’s needs and addressing the specific circumstances of the behaviour

8.4 When a complainant asks the police not to proceed or withdraws their support for a prosecution the police will take a written statement that will:

* Explain the reasons for withdrawing support;
* Set out whether the complainant has been pressurised to withdraw their complaint by any person and;
* Confirm whether the complainant is pursuing any civil action.

8.5 In addition, the police will provide a report that will:

* Set out the investigator’s views about the case, in particular the reasons for withdrawal and its impact on the case;
* Confirm if the complainant is supported by any specialist support service and, where they are, include the views of the supporter on how the complainant might react if required to attend court and whether they have been put under pressure not to support the prosecution;
* Assess the risks to the complainant and any other persons’ safety and;
* Assess how the complainant might react if required to attend court.

8.6 If it is suspected that the complainant has been pressurised or is frightened, the police will investigate further and assess any support that has been offered and whether the intervention of a local specialist support service could make a difference. The prosecutor will, if appropriate, ask the court to delay any hearing to enable this to be done.

8.7 If the complainant confirms that the complaint is true but still wants to withdraw, the police and CPS will consider the feasibility of continuing without the complainant’s evidence and whether to do so against the complainant’s wishes.

8.8 The issue of a witness summons is a last resort; full consideration should be given to the specific facts of the case and impact on the complainant’s safety and wellbeing[[11]](#footnote-11). Where a complainant is reluctant to attend court and it is decided the case can only continue with the complainant's evidence to prove the case, Section 169 of the Serious Organised Crime and Police Act 2005 allows the court to issue a witness summons if it considers it to be in the interests of justice to do so.

8.9 Before the decision to apply for a witness summons is taken, prosecutors must make enquiries to satisfy themselves that the safety of the complainant, any children and/or other dependants will not be endangered. This information could be sourced from the police, and other sources such as any support organisations involved with assisting the complainant.

8.10 Prosecutors should familiarise themselves with the section on witness summons within the [CPS Domestic Abuse Guidelines for Prosecutors](https://www.cps.gov.uk/legal-guidance/domestic-abuse-guidelines-prosecutors#a44). Police and prosecutors are reminded that applying for a witness summons should be regarded as a last resort and only considered when all other avenues above have been exhausted.

8.11 Where the CPS Area FGM Lead proposes to discontinue the case, they will consult with the police to ensure there is no further action that can be taken. The decision must be referred to senior CPS Area management, the DPPs Private Office in writing and recoded on the CPS Case Management System.

**9. SECTION 9 – VICTIM AND WITNESS CARE**

9.1 Prosecutors should be aware, when dealing with a case of FGM, that the complainant may not just be a complainant of FGM. The complainant may also have been subjected to rape and other sexual offences, or may have been subject to a FM. There is also the potential for beliefs in witchcraft to be prevalent in practising communities and for these beliefs to be used to justify actions or blame misfortune.There may also be an element of Coercive Control. The complainant may be under 18, and may also be a complainant of ill treatment.

9.2 It is important for police and prosecutors to remember that these cases may involve some of our most vulnerable complainants and witnesses who may have the least confidence in the criminal justice process. Complainants often feel a loyalty to their family/community and this might make them particularly reluctant to support a prosecution They may also need support mechanisms not just during the prosecution process, but also after the case is concluded. Complainants of FGM are entitled to an enhanced service under [The Code of Practice for Victims of Crime: CPS Legal Guidance (Victims Code)](https://www.cps.gov.uk/legal-guidance/victims-crime-code-practice-cps-legal-guidance). The police and CPS will comply with their responsibilities as set out in the Victims Code.

9.3 The police are responsible for ensuring that all FGM complainants are assisted appropriately according to their specific characteristics (age, maturity, disability, minority ethnic background, religion, gender/gender identity etc.) and that they are referred to a range of local specialist support services at the start of an investigation including, IDVA support, BME specialist organisations, or their equivalent, where available. A list of support agencies and corresponding help lines can be found within [CPS FGM Legal Guidance Annex A](https://www.cps.gov.uk/legal-guidance/female-genital-mutilation-legal-guidance#annexa).

9.4 In every case where the police receive a report of possible FGM, a strategy meeting should be convened to discuss risk, safeguarding and investigation. The meeting should include representation from the police, social worker in the local authority with a special interest, safeguarding representatives and community charitable support services, as appropriate.

9.5 In every FGM case the police will obtain the complainant’s agreement on who is to be their SPOC and their preferred means of contact (telephone, text, email or other). The identity of the SPOC should be shared with the CPS and the Witness Care Unit (WCU) so that it is clear who is responsible for communicating with the complainant and recording any actions arising. Thought should be given to succession planning in preparation for when a SPOC moves on or has any absence from work. The files of the police, CPS and WCU should be conspicuously marked so that it is clear to all parties who is responsible for communicating with the complainant and keeping records of any actions.

9.6 Police officers will explain to complainants and their supporters the available special measures and their advantages and disadvantages, including any potential impact on the proceedings. They will obtain the complainant’s informed views and an early special measures meeting will be held between the IO and the CPS Area FGM Lead to ensure these are considered and inform any special measures application. Prior to this meeting the IO will contact the specialist support service for an update on the complainant’s situation and any recent developments. The special measures application should include the name of any supporter that the complainant wishes to accompany them in court or a live link room. The CPS should make applications for special measures, bad character and hearsay evidence at the earliest possible opportunity. Police and prosecutors should remind complainants of the services offered by the Witness Service such as pre-trial familiarisation visits.

9.7 In every FGM prosecution the police and CPS will consider whether a special measures meeting should be held with the witness.

9.8 In every FGM prosecution the WCU will arrange a court familiarisation visit for the complainant. Where the complainant requires additional assistance such as an interpreter or help in gaining access to the premises due to disability such assistance will be provided. In the interests of the complainant and efficient case management, wherever possible, efforts will be made to coordinate the visit with the conference with counsel and the complainant's special measures meeting.

9.9 Where the CPS decision is not to charge, to reduce a charge or to end all proceedings in relation to the complainant, the police will personally deliver an explanatory letter to the complainant. The complainant should also be informed of their right to have the case re-reviewed as part of the Victims Right to Review (VRR) scheme.

9.10 Police and prosecutors should familiarise themselves with Table 3 of the [Toolkit for prosecutors on VAWG cases involving vulnerable victims](https://www.cps.gov.uk/publication/toolkit-prosecutors-violence-against-women-and-girls-cases-involving-vulnerable-victims), which outlines the support that should be given to vulnerable complainants throughout the CJS.

9.11 The police will ensure that in every case the complainant has the opportunity to provide a Victim Personal Statement (VPS). In all cases, the VPS and the information about the complainant’s preference will be relayed to the court at the first hearing by the CPS advocate. The VPS can be read aloud in court by the complainant or someone on the complainant’s behalf; this decision is at the discretion of the court.

9.12 When selecting interpreters, care must be taken to ensure that they speak the same language/dialect and where possible are sensitised to issues of gender based violence in BME communities. Experience has led to concerns about interpreters and translators who are not on the approved list and who may often be part of the family or linked to the group suspected of carrying out the crime. The selection of the right interpreter is essential given the potential risks for the details of the complainant’s account to be inappropriately disclosed to the suspects and/or other community members or for the complainant to be threatened or intimidated by the interpreter. Police and prosecutors should consult [CPS guidance on the use of interpreters](https://www.cps.gov.uk/legal-guidance/interpreters).

9.13 Investigators, prosecutors and WCUs need to know what support agencies are available for complainants within their local area, nationally, and internationally. Complainants must always be afforded the opportunity to be referred to specialist VAWG services and not subject to automatic referral without their consent. The police must endeavour to ensure the complainant is provided with access to such support[[12]](#footnote-12). Police and prosecutors should refer to the [Domestic Abuse Guidelines for Prosecutors](https://www.cps.gov.uk/legal-guidance/domestic-abuse-guidelines-prosecutors) and the [UK Border Agency (UKBA) Website](https://www.gov.uk/guidance/domestic-violence-and-abuse).

9.14 Section 4A of the 2003 Act makes provision for the anonymity of complainants of FGM. The effect of these provisions is to prohibit the publication of any matter that would be likely to lead members of the public to identify a person as the alleged complainant of any offence under the 2003 Act. Anonymity will commence once an allegation has been made and will last for the duration of the complainant’s lifetime. The prohibition covers immediate identifying information, such as name, address, and photograph of the complainant, but also any other information which, whether on its own or pieced together with other information, could lead members of the public to identify the complainant. Please refer to the [CPS FGM Legal Guidance](https://www.cps.gov.uk/legal-guidance/female-genital-mutilation-legal-guidance) for further information.

**10. SECTION 10 – TRIAL**

10.1 The CPS will select an advocate with the necessary skills and expertise to prosecute every FGM case whether from the CPS Panel of approved advocates from the self-employed Bar or from within the service.

10.2 The trial advocate will attend the pre-trial preparation hearing save in exceptional circumstances, reasons to be recorded on the file.

10.3 Prosecutors should remind the advocate to familiarise themselves with the [CPS Speaking to Witnesses at Court Guidance](https://www.cps.gov.uk/legal-guidance/speaking-witnesses-court)  which emphasises the need to ensure witnesses are properly assisted and know more about what to expect before they give their evidence.  It sets out what is expected of prosecution advocates, outlining what they can and cannot say to witnesses and explaining the difference between assisting a witness to be better able to deal with the rigors of giving evidence and witness coaching.

10.4 Also agreed, as part of its implementation, is a roles and responsibilities document which sets out the roles and responsibilities of all agencies which support complainants and witnesses at court. Each CPS Area should have discussed this document with local CJS partners as part of national implementation of the CPS guidance. The document may have been tailored to suit local practices, as such please ensure the local Roles and Responsibilities document is referred to.

10.5 The prosecuting advocate will introduce themselves to the complainant at court prior to the commencement of the trial. This is especially important if a special measures meeting with the complainant has not taken place. Prosecutors should be aware of the potential for the witness to feel further victimised and/or traumatised and, to minimise this, should ensure that witnesses feel valued and involved in the court process. Particular care needs to be taken to make sure they understand what will happen in court.

10.6 Witnesses should be reassured that the prosecution can object to intrusive/irrelevant cross-examination and the judge will decide whether the questions need be answered. The witness should be advised that the judge’s decision must be followed.

10.7 If a decision is taken at court to offer no evidence or accept a lesser plea the views of the complainant will be taken into account before a final decision is reached and the advocate will speak to the complainant directly or indirectly through an interpreter/an appointed person e.g. specialist support service, to explain the issues surrounding the decision.

**11. SECTION 11 – SHARING LESSONS LEARNT**

11.1 Both the local police and CPS will monitor these cases and provide feedback about good practice and areas for improvement through an agreed frequency of meetings between the police and the CPS lead. This information will then be passed to the CPS FGM Operational Policy Lead through the monthly teleconferences.

11.2 Where appropriate lessons learnt should also be shared with local specialist support agencies either through existing forums or by arranging ad-hoc meetings.

**12. SECTION 12 – SIGNATORIES**

12.1 This protocol will take effect in respect of all FGM investigations and prosecutions commencing on or after XXXX.

1. VAWG is the most widespread form of abuse worldwide, affecting on average one third of all women globally in their lifetime (WHO, MSC and LSHTM, 2013). [↑](#footnote-ref-1)
2. In 2003, the UN published reference: <http://www.ohchr.org/Documents/Issues/Women/15YearReviewofVAWMandate.pdf> [↑](#footnote-ref-2)
3. Other than in the excepted circumstances set out in sections 1(2) and (3), it is an offence for **any person (regardless of their nationality or residence status)** to: perform FGM **in England or Wales** (section 1 of the 2003 Act); assist a girl to carry out FGM on herself **in England or Wales** (section 2 of the 2003 Act); and

   assist (**from England or Wales**) a non-UK national or UK resident to carry out FGM outside the UK on a **UK national or UK resident20** (section 3 of the 2003 Act). [↑](#footnote-ref-3)
4. This includes the specific offence of [controlling or coercive behaviour in an intimate or family relationship.](https://www.cps.gov.uk/legal-guidance/controlling-or-coercive-behaviour-intimate-or-family-relationship) [↑](#footnote-ref-4)
5. Refer to:

   CPS Domestic Abuse Legal Guidance for advice on avoiding assumptions in relation to [terminology used](https://www.cps.gov.uk/legal-guidance/domestic-abuse-guidelines-prosecutors#a03) and on the [dynamics of domestic abuse](https://www.cps.gov.uk/legal-guidance/domestic-abuse-guidelines-prosecutors#a06)

   [CPS Rape and Sexual Offences Legal Guidance.](https://www.cps.gov.uk/legal-guidance/rape-and-sexual-offences" \o "CPS Rape and Sexual Offences Legal Guidance" \t "_blank)

   [College of Policing Authorised Professional Practice on Domestic Abuse](https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/domestic-abuse/)

   [Protocol between the Police Service and Crown Prosecution Service in the Investigation and Prosecution of Rape](https://www.cps.gov.uk/sites/default/files/documents/publications/cps_acpo_rape_protocol_v2-1.pdf)

   ***in cases involving rape; police should consider the early investigative advice procedure as set out in the Director’s Guidance on Charging*** [↑](#footnote-ref-5)
6. The ‘Guidelines of Paediatric Forensic Examinations in Relation to Possible Child Sexual Abuse’ (Faculty of Forensic and Legal Medicine-October 2012) state that is essential that a permanent record of the genital/anal findings be obtained in cases of suspected child sexual abuse. [↑](#footnote-ref-6)
7. It is recognised that the DASH model is under review and a refined model is currently being piloted. [↑](#footnote-ref-7)
8. Police to email:[mcis@nca.pnn.police.uk](mailto:mcis@nca.pnn.police.uk), non-police to email:[mcis@nca.x.gsi.gov.uk](mailto:mcis@nca.x.gsi.gov.uk) [↑](#footnote-ref-8)
9. “girl” includes woman’, i.e. a woman of any age can be protected by an FGMPO. [↑](#footnote-ref-9)
10. More information on applying for and FGMPO can be found here: <https://www.gov.uk/female-genital-mutilation-protection-order>. [↑](#footnote-ref-10)
11. However this should be discussed with the complainant; some complainants may find a summons a useful tool to demonstrate to their families/extended families that they had no choice but to attend court. [↑](#footnote-ref-11)
12. N.B: do not assume that if a complainant is from a particular community they would want to be referred to an organisation representative of that community. [↑](#footnote-ref-12)