**Executive Lead for Safeguarding**
NHS Trusts and NHS CCGs

**National Leads for Female Genital Mutilation**
NHS England & NHS Improvement
National Police Chiefs Council
Crown Prosecution Service

8th July 2019

Dear Executive Lead for Safeguarding,

**Female Genital Mutilation Recording and Reporting: Re-infibulation and Piercing cases**

This is a joint letter from the NHS England & NHS Improvement lead for FGM, the National Police Chief Council lead for Honour Based Abuse, and the Crown Prosecution Service Chief Crown Prosecutor lead for Honour Based Abuse.

The aim of this letter is to set out the legal position relating to re-infibulation and piercing in order to inform NHS reporting on FGM and to highlight potential safeguarding risks that need to be addressed by NHS Trusts and GP Practices when re-infibulation and piercing cases are identified.

**Executive summary**

It is our position that re-infibulation is a criminal offence caught by the provisions of the Female Genital Mutilation Act 2003 (FGMA 2003). Accordingly, the quality and detail of reporting is critical and it must be treated as a safeguarding issue. Genital piercing, as commonly understood, is unlikely to be caught by the provisions of the FGMA 2003. Clarity in the reporting of this practice is accordingly also important: where piercing does not fall within commonly understood practice it is also a safeguarding issue.

**Statistics**

According to NHS Digital, 35 cases of re-infibulation were reported between 1 April 2017 and 31 March 2018[1]. At least 88% of cases undertaken in the UK are identified as piercings: the remaining 12% may also be piercings but the data is unclear. Inaccurate recording of Type IV (not distinguishing 'Type IV – Piercings') within NHS datasets can affect the safeguarding response Police and partners adopt. It is important that we can identify FGM that has taken place here in the UK and address this risk. The FGMA 2003 protects habitual British residents[2] anywhere in the world. Where FGM is taking place within the UK it is unlikely to be an isolated incident, networks of cutting may be taking place and this can be challenged proactively by law enforcement.

[1] https://digital.nhs.uk/data-and-information/publications/statistical/female-genital-mutilation/female-genital-mutilation-fgm---annual-report-2017-18

[2] The term 'habitually resident' covers a person's ordinary residence, as opposed to a short, temporary stay in a country. The FGMA 2003 can capture offences of FGM committed abroad by or against those who are at the time are habitually resident in the UK irrespective of whether they are subject to immigration restrictions. It will be for the courts to determine on the facts of individual cases whether or not those involved are habitually resident in the UK and thus covered by the FGMA 2003 (Ministry of Justice & Home Office, 2015).

## (1) RE-INFIBULATION

**What is re-infibulation?**

Infibulation is the narrowing of the vaginal orifice with creation of a covering seal by cutting and appositioning the labia minora and/or the labia majora. Re-infibulation is when the raw edges of this wound are sutured again, closing off the introitus, for instance following childbirth, recreating a small vaginal opening similar to the original appearance of infibulation.

Women often expect re-infibulation after birth and there are reports of medical practitioners being asked to perform this, which is contrary to the FGMA 2003. In some countries, women and girls are re-infibulated immediately after childbirth. Re-infibulation is more common is Sudan, Sierra Leone, Senegal, Somalia, Yemen, Tanzania and Kenya. It is important to note that even when women *ask* to be re-infibulated, the practice is still illegal.

**Legal position of re-infibulation**

Section 1 of FGMA 2003 provides as follows:

> "(1) A person is guilty of an offence if he excises, infibulates or otherwise mutilates the whole or any part of a girl's labia majora, labia minora or clitoris.
>
> (2) But no offence is committed by an approved person who performs–
>
> > (a) a surgical operation on a girl which is necessary for her physical or mental health, or
> >
> > (b) a surgical operation on a girl who is in any stage of labour, or has just given birth, for purposes connected with the labour or birth.
>
> (3) The following are approved persons–
>
> > (a) in relation to an operation falling within subsection (2)(a), a registered medical practitioner,
> >
> > (b) in relation to an operation falling within subsection (2)(b), a registered medical practitioner, a registered midwife or a person undergoing a course of training with a view to becoming such a practitioner or midwife.
>
> (4) There is also no offence committed by a person who–
>
> > (a) performs a surgical operation falling within subsection (2)(a) or (b) outside the United Kingdom, and
> >
> > (b) in relation to such an operation exercises functions corresponding to those of an approved person.
>
> (5) 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."

Re-infibulation is an offence by virtue of section 1(1): it follows that the criminalisation of infibulation must also catch the same culpable conduct described as re-infibulation; the practice also amounts to mutilation.

**Safeguarding when re-infibulation is detected**
Professionals should be aware of the potential safeguarding concerns that re-infibulation cases pose. This will vary on a case-by-case basis and it is vital that professionals differentiate between:

i) Re-infibulation that has happened at some stage in a woman's life, which could have been pre-arrival to the UK.

ii) Re-infibulation that has happened recently, possibly since another child was born.

In the latter case, it is likely that significant safeguarding concerns are present in respect of other girls within the family and due consideration should be given to sharing information via existing referral pathways.

Safeguarding risks exist as women who have had re-infibulation are highly likely to be part of a family that supports FGM and this will pose an immediate risk to any female children they have. A mother that has undergone FGM in one of the biggest single indicators that her daughter might be at risk of FGM.

Important considerations from a policing perspective will be where and when the woman was re-infibulated, who performed the procedure and how many girls are connected to the family.

It is important to recognise the safeguarding risks that re-infibulation poses, in that those who have had it are likely to be the most conservative and supportive of FGM and thus likely to undertake FGM on their children.

It is equally important to distinguish from a safeguarding perspective, between consenting adult women who undergo piercing from a qualified practitioner, and other piercing practices. The piercing of girls aged under 18 is a safeguarding concern. Action could be taken against those involved, as it is likely that other criminal offences will have been committed. Multi-agency partnerships should clarify that children have not being subject to acts that would fall within the definition of mutilation under the FGMA 2003 and these acts subsequently being described as clitoral piercings to hide the offence committed.

## (2) GENITAL PIERCINGS

Genital piercings are commonly practiced on consenting adult women by qualified practitioners. These cases do not raise safeguarding concerns and thus practitioners do not need to report cases to the Police. However, the World Health Organisation (WHO) classifies any piercing (upon adults or children) as Type IV FGM, and NHS Trusts and GP Practices must reflect the WHO's classification when recording genital piercing cases on the FGM Enhanced Dataset.

Genital piercings performed on non-consenting women and/or girls are likely to raise safeguarding concerns and should be reported. Perpetrators could be prosecuted an array of criminal offences depending on the circumstances. It is important that reporting informs safeguarding, where the distinction between commonly understood and other piercings is critical.

Practitioners should be alert to girls that have undergone genital piercings as a form of ritual, tradition or custom rather than other types of FGM. If there are concerns that FGM is being performed under the guise of genital piercings, then such cases are likely to be a safeguarding concern and should be reported.

**Recording FGM**

There remains scope for improvements in the quality of the data recorded by NHS Trusts and GP Practices. Health data is perhaps the most useful dataset on FGM prevalence for partner agencies. It is vital that we ascertain and record information on the women's or girl's nationality, type of FGM, age at which she was cut, and every other mandated field in the dataset, not leaving it blank when data is submitted. This information helps to target prevention and safeguarding work more effectively.

The UK government is committed to preventing and ending FGM in the UK. It is illegal and is child abuse. It violates the rights of girls and women. NHS Digital supports this by: 1) Delivering a digital system to strengthen the safeguarding of girls at risk of FGM, this is the Female Genital Mutilation Indication System 2) Presenting a national picture of the prevalence of FGM across the NHS in England, this is the Female Genital Mutilation Enhanced Dataset. It is important that NHS Trusts and GP Practices are using these mandated systems.

**Reporting FGM**

The Government also supports safeguarding and ending FGM through the FGM Mandatory Reporting Duty. The FGM Mandatory Reporting Duty is a legal duty provided for in the FGMA 2003 (as amended by the Serious Crime Act 2015). The legislation requires regulated health and social care professionals and teachers in England and Wales to make a report to the police where, in the course of their professional duties, they either:

- are informed by a girl under 18 that an act of FGM has been carried out on her; or
- observe physical signs which appear to show that an act of FGM has been carried out on a girl under 18 and they have no reason to believe that the act was necessary for the girl's physical or mental health or for purposes connected with labour or birth.

Complying with the duty does not breach any confidentiality requirement or other restriction on disclosure that might otherwise apply.

The duty is a personal duty that requires the individual professional who becomes aware of the case to make a report; the responsibility cannot be transferred. The only exception to this is if you know that another individual from your profession has already made a report; there is no requirement to make a second. Mandatory Reports should be made via 101.

Vigilance is required as there is risk of both domestic and vacation cutting. As the summer holidays approach, can we please remind everyone to be extra vigilant, as this is a time when girls can be taken out of the country to be cut. Recent prosecutions have also shown that FGM is taking place here in the UK and it is important that we identify and respond to this threat.

For support and advice, you can contact the NSPCC FGM Helpline on 0800 028 3550 or fgmhelp@nspcc.org.uk, and visit the website via: https://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/female-genital-mutilation-fgm/.

You can also visit and join and e-network for Health Professionals working on FGM & Health Related Issues via: https://www.fgmnetwork.org.uk/. This is an FGM e-platform aimed at Specialist FGM Midwives, doctors, health visitors, nurses, students and relevant health and social care professionals, as a means of creating a virtual forum of support where relevant resources can be accessed, including links to appropriate data on FGM.

Yours sincerely

**Gwen Kennedy**
National FGM Lead
NHS England & NHS Improvement

**Ivan Balhatchet**
Commander
NPCC Lead for Honour-Based Abuse, Forced Marriage & Female Genital Mutilation

**Miss Jaswant K. Narwal**
Chief Crown Prosecutor, Crown Prosecution Service Thames and Chiltern Area
CPS National Lead for Honour Based Abuse