



# Coercive Control - Supporting victims of abuse in a changing legal landscape

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GARDEN COURT CHAMBERS



TOP TIER SET  
2020



Garden Court Chambers

24 November 2020



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# Why is coercive control so topical?

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- The Serious Crime Act 2015 created a new offence of controlling or coercive behaviour in intimate or familial relationships.
- The Domestic Abuse Bill currently going through parliament will create a new statutory definition of domestic abuse, to include controlling or coercive behaviour.
- Coercive control has been increasingly represented in popular culture, for example Helen in *The Archers* or Yasmeen in *Coronation Street*
- The Court of Appeal case of Sally Challen in 2019 shone a spotlight on the issue. Mrs Challen's murder conviction was overturned when new evidence came to light, which took into account the impact of coercive control on her state of mind.
- Coercive control frequently arises as an issue in the family courts. Maggie Jones represented the Mother in the recent case of *R v P [2020] EWCA Civ 1088* in the Court of Appeal.



# What is Coercive Control? - legal definitions

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- In the family courts, Practice Direction 12J (revised in 2017) sets out guidance in relation to cases involving domestic abuse. Domestic abuse is defined broadly as *‘including any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, psychological, physical, sexual, financial or emotional abuse.’*
- Coercive behaviour is defined as *‘an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim’*
- Controlling behaviour is defined *‘an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour’*
- The same definitions of domestic abuse and coercive control are currently used in government guidance for prosecutors.



# What is Coercive Control? – academic history of the term

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- It is now recognised that domestic violence comprises a range of behaviours beyond physical and emotional abuse. Dr Evan Stark coined the term '*coercive control*' to describe a course of oppressive behaviour grounded in gender based privilege.

Examples include:

- isolating a person from friends and family
  - monitoring their time or movements
  - controlling aspects of their everyday life
  - repeatedly putting them down
  - financial abuse
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- Historically, domestic abuse had been understood by reference to individual acts of physical or emotional abuse. According to Stark, this failed to recognise underlying and insidious patterns of behaviour which could be equally harmful, functioning so as to 'trap' victims in an abusive relationship.



# Evidential issues when trying to prove coercive control

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# Definition of Domestic Abuse

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Government definition domestic abuse 2012:

*"Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members, regardless of gender or sexuality. This can encompass, but is not limited to, the following types of abuse: psychological, physical, sexual, financial and emotional."*



# Definition of Domestic Abuse

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This definition also sets out the following:

- Coercive behaviour is an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim
- Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour

And is supported by the following explanatory text:

*"This definition, which is not a legal definition, includes so called 'honour' based violence, female genital mutilation (FGM) and forced marriage, and is clear that victims are not confined to one gender or ethnic group."*





# Domestic Abuse Bill 2020

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- Statutory Definition
- Underpinning statutory guidance and training
- Section 76 of the Serious Crime Act 2015 - Controlling or Coercive Behaviour in an Intimate or Family Relationship
- Behaviour must be 'repeatedly' or 'continuously'.
- It must have a 'serious effect' on someone and one way of proving this is that it causes someone to fear, on at least two occasions, that violence will be used.
- Must prove intent to control or coerce



# Domestic Abuse Bill 2020

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Examples of substantial adverse effect:

- Stopping or changing the way someone socialises
- Physical or mental health deterioration
- A change in routine at home including those associated with mealtimes or household chores
- Attendance record at school
- Putting in place measures at home to safeguard themselves or their children
- Changes to work patterns, employment status or routes to work

Court's Response

Single Incident v. Pattern and Cumulative Impact



# Home Office Statutory Guidance pursuant to Serious Crime Act 2015

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## Relevant behaviour:

- Isolating a person from their friends and family
- Depriving them of their basic needs
- Monitoring their time
- Monitoring a person via online communication tools or using spyware
- Taking control over aspects of their everyday life, such as where they can go, who they can see, what to wear and when they can sleep
- Depriving them access to support services, such as specialist support or medical services
- Repeatedly putting them down such as telling them they are worthless
- Enforcing rules and activity which humiliate, degrade or dehumanise the victim
- Forcing the victim to take part in criminal activity such as shoplifting, neglect or abuse of children to encourage self-blame and prevent disclosure to authorities
- Financial abuse including control of finances, such as only allowing a person a punitive allowance
- Control ability to go to school or place of study



# Home Office Statutory Guidance pursuant to Serious Crime Act 2015

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- Taking wages, benefits or allowances
- Threats to hurt or kill
- Threats to harm a child
- Threats to reveal or publish private information (e.g. threatening to 'out' someone)
- Threats to hurt or physically harming a family pet
- Assault
- Criminal damage (such as destruction of household goods)
- Preventing a person from having access to transport or from working
- Preventing a person from being able to attend school, college or University
- Family 'dishonour'
- Reputational damage
- Disclosure of sexual orientation
- Disclosure of HIV status or other medical condition without consent
- Limiting access to family, friends and finances



# Home Office Statutory Guidance pursuant to Serious Crime Act 2015

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## Additional factors

- Framework of entrapment
- Designed to achieve compliance
- Gas-lighting
- Personal to victim's own characteristics



# Recent Court of Appeal Authorities

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- *Sargeant* [2019] EWCA Crim 1088, an appeal against conviction for a woman who unsuccessfully ran a defence of diminished responsibility.
- *Harris* [2019] EWCA Crim 2008, a sentence appeal for a woman acquitted of murder but convicted of manslaughter.
- *Osinski* [2019] EWCA Crim 1686, an A-G's reference for a man convicted of rape and coercive control.
- *Thomas* [2019] EWCA Crim 2426 which was not a coercive control case as such, but the evidence of the defendant's coercive and controlling behaviour was taken into account when passing an extended sentence.



# Case Preparation

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- Taking instructions
- Full history



# Evidential and Disclosure Request Checklist

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- Social media
- Spreading lies or personal information about you online
- Creating a website to harass or abuse
- Setting up fake social media or email profiles
- Sharing private photos online without your consent (image based sexual abuse or so-called ‘revenge pornography’)
- Using GPS or other geo-locator software to track your movements
- Using spyware
- Copies of emails
- Phone records
- Text messages
- Evidence of abuse over the internet, digital technology and social media platforms
- Photographs of injuries such as: defensive injuries to forearms, latent upper arm grabs, scalp bruising, clumps of hair missing
- 999 tapes or transcripts





# Evidential and Disclosure Request Checklist

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- CCTV
- Body worn video footage
- Lifestyle and household including at scene photographic evidence
- Records of interaction with services such as support services, (even if parts of those records relate to events which occurred before the new offence came into force, their contents may still, in certain circumstances, be relied on in evidence)
- Medical records
- Witness testimony, for example the family and friends of the victim may be able to give evidence about the effect and impact of isolation of the victim from them
- Local enquiries: neighbours, regular deliveries, postal, cleaner
- Bank records to show financial control
- Previous threats made to children or other family members
- Diary kept by the victim, ideally time-stamped
- Victims account of what happened to the police
- Evidence of isolation such as lack of contact between family and friends, victim withdrawing from activities such as clubs, perpetrator accompanying victim to medical appointments



# Evidential and Disclosure Request Checklist

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- GPS tracking devices installed on mobile phones, tablets, vehicles
- Suicide attempts and/or mental health crisis
- Drug or alcohol misuse
- Whether the perpetrator is commencing child contact proceedings in the family courts
- Leaving a care placement
- Criminal proceedings or evidence of bail for a domestic abuse-related offence;
- Court undertakings relating to domestic abuse; court findings of fact relating to domestic abuse; relevant police cautions for domestic abuse
- Evidence that someone has been granted indefinite leave to remain in the UK as a victim of domestic abuse
- Evidence that someone has been granted legal aid in private family proceedings for domestic abuse



# Trial Considerations

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- Beware stereotypical victim [addiction, detachment, anger, social and cultural context, guilt and shame, self-blame, withdrawal, collusion, barriers to communication see Advocates' Gateway Toolkits]
- Judicial directions [comparison sexual violence direction]
- Assessment cumulative psychological impact pattern abuse
- Importance psychiatric assessments
- Consider obtaining expert evidence relating to domestic abuse
- Consider obtaining cultural reports
- Consider defendant special measures in interests of justice
- Partial defence murder
- Diminished responsibility
  - Cumulative impact
- Loss of control
  - Psychiatric and psychological evidence admissible gravity of qualifying trigger
  - Not context, degree of tolerance/ self-restraint
- Relevant to self-defence
  - Immediacy threat
  - Fear as opposed to fear of immediate violence



# Relevant to duress

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## Immediacy - Victim collusion

Reliance on requiring high degree physical duress, physical harm or death v. coerced woman

Brandford [2017] 4 WLR 17

*"We regard it as fanciful that Brandford was compelled by fear to carry the drugs on the 27 August. In our judgment, the jury would have been bound to find the defence disproved on grounds both of want of immediacy and voluntary association. That Brandford may very likely have acted out of love, infatuation or under pressure from Alford does not avail her as the circumstances fell well short of the exacting requirements of the defence of duress.... That said, they are not necessarily irreconcilable and, in some circumstances, may operate in a cumulative manner. Consider, for example, a credible threat of death to a husband, conveyed also and directly to the wife. The husband then exploits his relationship with his wife to overcome her resistance to committing with him a serious crime to avoid the threat being carried out. Obviously questions remain as to whether the wife comes within the two limbs of Lord Lane CJ's <sup>[1]</sup><sub>[SEP]</sub> test for duress (set out at para 31 above). But the relationship between pressure and the fear founding duress are not, as it seems to us, necessarily irreconcilable. They are, however, very different'.*

Role in making representations against pursuing prosecution

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# Mitigation

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*R v Reynolds* [2016] EWCA Crim 2217

*“We are persuaded that this very unusual combination of circumstances justifies the quite exceptional course of imposing a suspended sentence in this case...At the heart of the appellant's problems is her tendency to associate with men who treat her badly. They become violent and abusive. But she is unable to distance herself from them. They have ended up in prison. For that reason, [whilst] we are prepared to suspend this sentence ...”*



# Impact of Covid-19 & Signposting for Survivors

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# Impact of Covid-19

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- In August Women's Aid published '*A Perfect Storm: The Impact of the Covid-19 Pandemic on Domestic Abuse Survivors and the Services Supporting them*' (2020)
- Nearly 70% of survivors said that their abuser had started using lockdown restrictions or other Covid consequences as part of the abuse
- Over 60% of women living with their abuser said the abuse had got worse during the pandemic.
- Nearly 80% of women living with their abuser said they felt they could not leave or get away.
- Availability of refuge spaces reduced during the first lockdown and support services faced increased funding challenges. There was a reduction in access to public spaces, all of which made it harder for victims to seek help.



# Help and Support

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- Call the National Domestic Abuse helpline 24/7 on 0808 2000 247
- Call the Refuge helpline 24/7 on 0808 200 247
- Women's Aid offer a Live Chat service: <https://chat.womensaid.org.uk> or you can email [helpline@womensaid.org.uk](mailto:helpline@womensaid.org.uk)
- Call the Respect Men's Advice Line on 0808 8010 327, 9am – 8pm Monday - Friday <https://mensadviceline.org.uk> or email [info@mensadviceline.org.uk](mailto:info@mensadviceline.org.uk)
- In an emergency call 999





# Thank you

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