



Supporting people with social care needs who are experiencing coercive control

Guidance Sheet One: Law and Policy Summary

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Domestic abuse policy background

Domestic violence and abuse has been recognised nationally and internationally as a serious human rights and economic issue, having significant costs to the wellbeing of individuals and to 'society'. For England and Wales the estimated cost of physical and emotional damage to individual victims, the cost of preventing people working and paying taxes, caring or otherwise contributing to their community, as well as the cost of service provision (e.g. Health, Housing, Criminal Justice, Child Protection) totals £15,730 million per year (Walby, 2004; Walby, 2009).

The UK government has made tackling domestic abuse and the harm it causes a priority (HM Government, 2016). The strategy is focused on prevention including; taking proactive criminal justice action and ensuring perpetrators have access to effective programs to change their behaviour, prevention through public information and work with children and young people to promote knowledge and skills in healthy relationships and sexual consent, and identifying and getting effective support to those experiencing domestic abuse (HM Government, 2013).

Following a consultation that took place in 2014, coercive control has also been added to the UK Government definition of **domestic violence and abuse** as:

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*
- *emotional*

Controlling behaviour

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.

Coercive behaviour

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. (HM Government, 2016)

New offence: controlling and coercive behaviour

In December 2015 the criminal offence of controlling and coercive behaviour in an intimate or family relationship was brought into law under the Serious Crime Act 2015. It is accompanied by statutory guidance (Home Office, 2015).

This law covers the use of coercive control in relationships where people are '**personally connected**'; that is the incidents of controlling and coercive behaviour took place at a time when the people concerned were **engaged in an intimate personal relationship (whether they lived together or not) or they lived together and were family members, or they lived together and had previously been in an intimate personal relationship.**

The offence is defined as

- behaviour on the part of the perpetrator which takes place '**repeatedly or continuously**';
 - that had a '**serious effect**' on the victim; meaning that it has caused the victim to fear violence will be used against them on '**at least two occasions**', or it has had a '**substantial adverse effect on their day to day activities**'
- AND
- the alleged perpetrator must **have known** that their **behaviour would have a serious effect on the victim**, or the behaviour must have been such that he or she '**ought to have known**' it would have that effect.

The offence carries a maximum sentence of 5 years' imprisonment, a fine or both. Coercive and controlling behaviour includes behaviours that are crimes in their own right (e.g. murder, rape, manslaughter, assault, threatening behaviour, criminal damage and theft (CPS, 2015)) which can be prosecuted separately AND behaviours that, if they take place in a different context, are not criminal offences.



The aim of the new crime of coercive control is to address a specific gap in the law in relation to domestic abuse. Criminal charges relating to domestic abuse have previously been (and can still be) prosecuted using laws relating to individual incidents of crimes. The new crime enables a pattern of behaviour and the cumulative impact of both criminal and non-criminal behaviour to be prosecuted. Awareness of the new crime also aims to promote understanding of the role of coercive control as the set of behaviours that entrap women (and some men) in abusive relationships.

The new offence **does not** cover the use of coercive control in other relationships that might be referred to as safeguarding concerns; for example, within institutions such as hospitals or care homes, by care staff working in a person's own home or bullying at work.

Safeguarding adults and coercive control

Government strategy recognises that tackling domestic abuse is a cross-departmental and multi-agency responsibility.

The statutory guidance in relation to the offence of controlling or coercive behaviour states that it should be dealt with as part of adult and/or child safeguarding and public protection procedures.

Both the March 2016 statutory guidance in relation to sections 42-46 of the Care Act 2014 (DH, 2016) and the April 2016 guidance in relation to section 7 of the Social Services and Well-being Act Wales 2014 (Welsh Government, 2016) includes coercive control. This means that a local authority's duty to make (or ask others to make) safeguarding enquiries and determine what action is needed to protect 'an adult at risk' are triggered by 'reasonable cause to suspect' that an adult with health and social care needs is experiencing coercive control (where their needs prevent them from protecting themselves).

Under the Welsh legislation the skills defined for Authorised Officers (AO), those who will make applications to a magistrate's court for an Adult Protection and Support Order (APSO), include an ability to identify coercive control and its effects on adults.

Mental capacity

Another key question for adult social workers is whether the adult at risk from domestic abuse has the mental capacity to make relevant decisions about their safety and the support that they want. The Mental Capacity Act 2005 provides guidance on supporting people who may have an impairment of their mind or brain to make decisions for themselves. The five key principles of the Act are outlined below:

- Assume that a person has capacity unless it can be demonstrated otherwise.
- Support people to make their own decisions wherever possible.
- People can make 'unwise' decisions – making an unwise decision (e.g. to stay in an abusive relationship) does not mean someone lacks capacity.
- Any decision made on behalf of someone who lacks capacity must be in their best interests.
- Decisions made on behalf of someone who lacks capacity must reflect the least restrictive option.



This is particularly complex in situations where a person may have impaired capacity to make a decision due to the impact of the abuse they are experiencing affecting their ability to weigh up the risks and benefits of that decision. This situation has been discussed in case law:

A vulnerable adult who does not suffer from any kind of mental incapacityis, or is reasonably believed to be, incapacitated from making the relevant decision by reason of such things as constraint, coercion, undue influence or other vitiating factors. (Re: SA (Vulnerable adult with capacity: marriage) [2005] EWHC 2942 (Fam). Para 79)

In a Court of Protection judgement (A Local Authority v DL, RL & ML [2010] EWHC 2675) and a subsequent judgement by the Court of Appeal it was agreed that 'inherent jurisdiction' could be used in such a circumstance. In the case, the elderly parents of a 50 year old man referred to as DL were constrained from exercising their decision making capacity due to his coercive and controlling behaviour towards them (DL v A Local Authority & Others [2012] EWCA Civ 253).

Local Authorities can therefore apply to the Court of Protection for relevant orders to protect people who are not able to make decisions due to the level of coercion and control being exercised over them.

The Crown Prosecution Service also recognises the impact of coercive control on the ability of witnesses with physical, learning and mental disabilities to give statements about the abuse they have experienced. 'Special measures' such as screening the survivor from the perpetrator in court or using video evidence can be used to support people to give 'best evidence'. Similar measures can be applied for in relation to non-disabled 'intimidated witnesses'.

Please see our briefing on Mental Capacity and Coercion (Pike, 2016) for more information.

Legal responses

Social workers need to be aware of the range of civil and criminal justice options available to support survivors of domestic abuse, and know who to contact for support in accessing these responses. Responses may be criminal, civil or restorative; criminal justice is generally punitive, whereas civil justice aims to protect. Great care should be taken if restorative justice options are considered – for example, family group conferences or mediation would generally not be recommended in circumstances of coercive control.

Up until recently, various elements of the law were used to respond to specific incidents of physical violence or other types of abuse that comprises domestic abuse. Some of the existing criminal offences that can be pursued are listed below. Following the implementation of the Serious Crime Act 2015, the offence of controlling and coercive behaviour should be considered.

The list of responses below is not exhaustive; survivors should be offered the option to press charges for criminal offences. These may include:

- common assault and battery (Criminal Justice Act 1988 s39)
- false imprisonment (Common law)
- destroying or damaging property (Criminal Damage Act 1971 s1)
- theft (Theft Act 1968 s7)



- fraud (Fraud Act 2006)
- rape (Sexual Offences Act 1956, 2003, s1), sexual assault (Sexual Offences Act 2003 s3)
- harassment, alarm or distress (Public Order Act 1986 s4A and 5)
- stalking (Protection from Harassment Act 1997 s2A amended by Protection of Freedom Act 2012)
- murder and attempted murder (various)
- threats to kill (Offences Against the Person Act 1861 s16)
- causing or allowing a child or vulnerable adult to die or to suffer serious physical harm (Domestic Violence Crime and Victims Act 2004 s5)
- ill treatment and / or wilful neglect of a person lacking mental capacity (Mental Capacity Act 2005 s44).
- Disclosing private sexual photographs and films with intent to cause distress (Criminal Justice and Courts Act 2015 s33).

Good multi-agency working is needed to make sure that the person's wishes and choices are put at the centre of any civil or criminal justice options that are pursued. Clear communication of the possible outcomes is essential. It is important to ensure that people with health and social care needs are given the opportunity to seek justice, as the evidence suggests that this is not always the case (e.g. Clarke et al, 2016). People may be reluctant to take action against their partner or family member and so options should be explored sensitively, with the person's safety and wellbeing prioritised.

Social workers have a role to play in:

- advising people about their legal options, or knowing who to signpost them to in order to do so;
- working with police to gather and record evidence which may be used to make a case in court;
- ensuring the availability of support throughout the process of seeking justice (Pike and Norman, in press).

The table below outlines some civil justice options – protective or preventative measures which can help to give a survivor some 'breathing space' away from the perpetrator. This time can enable a survivor to consider, free of control or coercion, their next steps in safety planning.

Response	Comes from which legislation?	What does it do?	Who can obtain one and how?
Domestic Violence Protection Notice (DVPN)	Crime and Security Act 2010	DVPNs are the first step to acquiring a DVPO.	Served by the police if they have a reasonable belief that domestic violence has occurred.
Domestic Violence Protection Order (DVPO)	Crime and Security Act 2010	DVPOs can last between 14 and 28 days. They provide short term protection for survivors of domestic abuse. They have the power to stop the perpetrator entering or being a certain distance from the person's home; prevent the	A Magistrates Court will hear applications within 48 hours of the DVPN being served by Police. The perpetrator does



		<p>perpetrator from excluding the person from the home; or require the perpetrator to leave the home of the person at risk.</p> <p>The police can arrest anyone who breaches the terms of the DVPO.</p>	<p>not have to attend the Court to be served one, and the survivor does not have to agree to it.</p>
Forced Marriage Protection Order	Anti-social Behaviour Crime and Policing Act 2014	Forced Marriage Protection Orders can be designed to support individual circumstances – for example, stopping someone being taken out of the UK.	Anyone can apply for one online. They will need to take the completed forms to a Family Court.
Restraining Order	Domestic Violence Crime and Victims Act 2004	Restraining orders can be made on conviction or acquittal for any criminal offence. To obtain one, there must be a need to protect a named person or persons.	A restraining order can be obtained from a criminal court.
Injunction	Domestic Violence, Crime and Victims Act 2004	<p>A 'stay away' order, which either prevents or compels certain behaviours. A power of arrest can be attached where it can be shown that violence has been used or threatened against the person, and is likely to happen again.</p> <p>Injunctions include non-molestation orders, which protect the person or their child from being harmed or threatened by a perpetrator; or occupation orders, which outline who can live in the family home, or be in the local area.</p>	Application from a court that deals with domestic violence cases.
Domestic Violence Disclosure scheme	Claire's Law 2014	This can be used when there is a suspicion that someone has been abusive in previous relationships. The victim or an associated person can take the details of the suspected perpetrator to the police and after investigation, they can decide to give the history of any previous violence/abuse that they have on record to the victim, if they believe that it is in their best interest. Most are decided in a sub-group of the multi-agency risk assessment conference (MARAC).	Anyone can take a request to the police.



Advocacy

Under the Care Act, people are entitled to access an advocate to support them during a safeguarding enquiry if they have 'substantial difficulty' being involved in the enquiry. Independent advocacy support can be accessed from numerous sources, including specialist domestic abuse advocacy. The advocate should have the relevant knowledge and experience with working with situations of coercive control, to ensure they have the right expertise to support the person. Some types of advocates that you may wish to approach include

- Independent Domestic Violence Advocates (IDVAs)
- Independent Sexual Violence Advocates (ISVAs)
- Independent Mental Capacity Advocates (IMCAs)

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