

**Controlling or coercive behaviour in an intimate or family relationship:
A new domestic abuse offence in England and Wales**

Keren Lloyd Bright, Senior Lecturer in Law, The Open University

Introduction

A new criminal offence recognising that domestic abuse can take a variety of forms, has been brought onto the statute book of England and Wales by the Serious Crime Act 2015. The new offence of controlling or coercive behaviour in an intimate or family relationship is set out in Section 76. The section has been in force since 29th December 2015.

Alison Saunders, the Director of Public Prosecutions for England and Wales, has said:

‘Controlling or coercive behaviour can limit victims’ basic human rights, such as their freedom of movement and their independence. This behaviour can be incredibly harmful in an abusive relationship where one person holds more power than the other, even if on the face of it this behaviour might seem playful, innocuous or loving. Victims can be frightened of the repercussions of not abiding by someone else’s rules. Often they fear that violence will be used against them, or suffer from extreme psychological and emotional abuse. Being subjected to repeated humiliation, intimidation or subordination can be as harmful as physical abuse, with many victims stating that trauma from psychological abuse had a more lasting impact than physical abuse.’

(CPS, 2015)

Section 76 provides statutory recognition that serious emotional and psychological harm may be caused to an intimate partner or family member by a perpetrator, through extreme abuse which stops short of actual physical and sexual violence. It also recognises that domestic abuse is not confined to isolated violent events, but may consist of a pattern of behaviour taking place over a period of time which may encompass many separate incidents. Taken by themselves, the separate incidents may appear fairly harmless; but it is the overall cumulative effect of the abuse which can have serious consequences. While controlling or coercive behaviour is not the sole province of either gender, the perpetrators are disproportionately male and the victims are disproportionately female. The statutory guidance provided by the UK Home Office makes plain that ‘Controlling or coercive behaviour is primarily a form of violence against women and girls and is underpinned by wider societal gender inequality’ (Home Office, 2015, p.7).

The historical context for the new domestic abuse offence

The section 76 offence of controlling or coercive behaviour can be seen as one of a number of developments in England and Wales over the last quarter of a century which seek to protect women in an intimate or family relationship.

Particular milestones include the case of *R v R [1992] 1 A.C. 599* and 'Clare's law'. The case of *R v R [1992]* is widely known. For 250 years prior to the decision in this case, there had been a marital exemption for rape or attempted rape on the presumption that the state of matrimony implied irrevocable consent to sexual intercourse. This case ended the marital rape exception: where there is no consent, the perpetrator may be charged and convicted of the offences of rape or attempted rape.

In 2011, the UK coalition government introduced a policy paper entitled 'Call to End Violence against Women and Girls: Action Plan'. The action plan set out a cross-governmental strategic framework – as a response to the UN declaration on the Elimination of Violence against Women (1993). In 2013, the cross-government non-legal definition of domestic violence and abuse was published:

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 sexual orientation. This can encompass, but is not limited to, the following types of abuse: psychological; physical; sexual; financial; emotional

(Home Office, 2013)

In 2014, the Domestic Violence Disclosure Scheme was rolled out nationally across the UK. This scheme allows potential victims of domestic abuse (or their friends or relatives) to apply to the police for any available information about their partner's previous history of violence. The Domestic Violence Disclosure Scheme is also known as 'Clare's Law'. Clare Wood was killed by her ex-boyfriend in 2009 - he, unbeknown to her, had a history of violence against previous partners.

The section 76 domestic abuse offence in more detail

The section 76 offence extends the criminal consequences of domestic abuse to include emotional, financial and psychological abuse. The offence is set out in s76(1) Serious Crime Act 2015.

Section 76 Controlling or coercive behaviour in an intimate or family relationship

(1) A person (A) commits an offence if—

(a) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive,

(b) at the time of the behaviour, A and B are personally connected,

(c) the behaviour has a serious effect on B, and

(d) A knows or ought to know that the behaviour will have a serious effect on B.

A detailed statutory guidance framework has been issued about the ambit of the offence, pursuant to s77 of the 2015 Act (Home Office, 2015). The victim and perpetrator must be 'personally connected'. This element is defined in s76(2) and includes situations where two people are in an intimate personal relationship, or they live together and are either members of the same family or have previously been in an intimate personal relationship with each other. 'Members of the same family' include situations where the victim and perpetrator have agreed to marry or are married or are divorced; have agreed to be civil partners or are civil partners; are relatives; are parents of the same child; have or have had parental responsibility for the same child (s76(6)).

The s76 offence does not apply where the victim and perpetrator neither live together nor are in an intimate personal relationship. Instead, stalking and harassment legislation should be used where appropriate – such as where a perpetrator is monitoring, stalking or intimidating a victim (Home Office, 2015, p.6). Neither does the s76 offence apply where the victim is under the age of 16 and the perpetrator is aged 16 or over and has responsibility for the victim (s76(3)) – as there is already provision for this in the criminal law (see s1 of the Children and Young Persons Act 1933, as amended by s66 of the 2015 Act).

After establishing that the victim and perpetrator are 'personally connected', the courts will look for a continuous pattern of controlling and coercive behaviour and thus one or two isolated incidents, particularly if they take place over a protracted period of time, will not suffice. The statutory guidance framework sets out a non-exhaustive list of the types of behaviour that may come under the s76 offence:

'The types of behaviour associated with coercion or control may or may not constitute a criminal offence in their own right. It is important to remember that the presence of controlling or coercive behaviour does not mean that no other offence has been committed or cannot be charged. However, the perpetrator may limit space for action and exhibit a story of ownership and entitlement over the victim. Such behaviours might include:

- 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 of 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;
- threats to hurt or kill;
- threats to a child;
- threats to reveal or publish private information (e.g. threatening to 'out' someone).
- assault;
- criminal damage (such as destruction of household goods);
- rape;
- preventing a person from having access to transport or from working.

(Home Office, 2015, p.4)

The next step is to determine whether the perpetrator's continuous pattern of behaviour has had a 'serious effect' on the victim (s76(1)(c)) – for which s76(4) sets out two alternative tests. The first is whether the behaviour has caused the victim to fear on at least two occasions that violence will be used against them. The second of the alternative tests is whether the behaviour has caused the victim serious alarm or distress which has a substantial adverse effect on the victim's usual day-to-day activities. Finally, the perpetrator must know or ought to know that the behaviour will have a serious effect on the victim (s76(1)(d)).

The defence to proceedings brought under s76 in a magistrates court or crown court is set out in subsections (8) to (10) of s76 of the Act. The perpetrator must show that they believed they were acting in the victim's best interests when they engaged in the behaviour in question. The perpetrator must also show that the behaviour was objectively reasonable in all the circumstances. Accordingly, the magistrates or crown court jury will not accept the defence where they find that the behaviour was not reasonable in all the circumstances. The defence is in any event unavailable where the behaviour has caused the victim to fear that violence will be used against them (s76(10)).

A perpetrator found guilty of the offence is liable to a term of imprisonment, or a fine, or both. The maximum prison sentence that can be imposed by a magistrates court is 12 months, and by a crown court, five years.

Early prosecutions of the new domestic abuse offence

The Crown Prosecution Service report published in September 2016 indicated that there had been five prosecutions of the offence by the end of March 2016, following the coming into force of section 76 in December 2015 (CPS, 2016).

One of these prosecutions was reported nationally. The defendant, Mohammed Anwaar, pleaded guilty to the section 76 offence of coercive and controlling behaviour (in addition to other offences of assault and criminal damage) and was given a prison sentence of 28 months. The behaviour had taken place over a two year period and included controlling his partner as to what she should eat and wear and by restricting her access to her friends and family (BBC, 2016). The defendant also assaulted his partner on multiple occasions when she disobeyed his instructions. The tabloid newspapers reported on the more lurid aspects of the case – which did attract public attention and served to increase public awareness of the scope of the offence.

Fostering public awareness of the new offence

Another way of fostering public awareness about the new offence beyond media reports and announcements on government websites, is by way of drama on television and radio networks.

The new offence has featured as a storyline in the long-running BBC Radio 4 soap opera 'The Archers'. This radio programme has been broadcast since 1950 and was originally conceived as a vehicle for education about rural affairs - with information supplied by the Ministry of Agriculture - in a post war Britain struggling with food shortages and rationing. 'The Archers' currently has weekly listening figures of over 5 million. In the best tradition of public service broadcasting, scriptwriters for 'The Archers' have used dramatic narrative to increase public awareness and understanding of the section 76 offence.

The story was developed slowly over a real time period of two and a half years – which reflects the imperceptible 'drip drip' cumulative effect that is so typical of the controlling and coercive pattern of behaviour. The script was imbued with authenticity as the writers were advised by the charities Women's Aid and Refuge. Listeners witnessed week by week the insidious emotional abuse wrought by the perpetrator Rob Titchener on his wife Helen Titchener. The victim was prevented from driving and working; her movements were monitored by software installed on her mobile phone; she was isolated from family and friends and finally became a virtual prisoner in her own home. The perpetrator was, however, outwardly charming, caring and plausible.

'The Archers' storyline often made for difficult listening and generated a great deal of comment on social media, print media and broadcast media in the UK – as any internet search will reveal. The storyline has undoubtedly served to increase public awareness of the nature of controlling and coercive behaviour. Between February 2015 and February 2016,

there was a 20% increase in telephone calls to the National Domestic Abuse Helpline and it is believed 'The Archers' storyline was in part responsible for this (Kerley and Bates, 2016). The women's charity Refuge has also experienced a significant increase in donations (BBCb, 2016).

Conclusion

As was indicated above, the highest levels of the UK government and the Crown Prosecution Service of England and Wales are strongly committed to combating violence against women and girls. The most recent CPS report 'Violence against Women and Girls Crime Report 2015-16' published in September 2016, states that:

'The Crown Prosecution Service is prosecuting and convicting a record number of rape, domestic abuse, sexual offences and child abuse cases ... The CPS's annual Violence against Women and Girls report shows that rape, domestic abuse and sexual offences now account for 18.6 per cent of the CPS's total caseload and this figure has been increasing year-on-year. In 2015/16, the CPS prosecuted 117,568 defendants for all crimes grouped together as Violence against Women and Girls (VaWG). More than 100,000 defendants were prosecuted for domestic abuse, with over 75,000 convicted - the highest volumes ever recorded, also reaching the highest ever conviction rate of 75.4 per cent by March 2016.' (CPS, 2016)

However, as against this high-level commitment and these statistics, an article published in a national newspaper in August 2016, using information obtained under a freedom of information request, reported that the section 76 offence had been used just 62 times to charge perpetrators in the first six months since coming into force in December 2015. According to the article, eight out of 22 police forces in England and Wales were yet to charge anyone with the offence (Hill, 2016).

The article also reported that in 2014, the charitable organisation 'Citizens Advice' had helped approximately 3,000 victims of emotional abuse and 900 victims of financial abuse. So at present there is a substantial numerical gap between those approaching charitable organisations with complaints of controlling and coercive behaviour and the progress of prosecutions through the criminal courts.

There are a number of issues which need to be addressed. The first is the need for increased specialist training for police officers, as they need to develop awareness that domestic abuse is not confined to actual physical and sexual violence and that they should be alert to the signs of controlling and coercive behaviour and the risks these pose to victims – as often victims do not recognise themselves as victims as such (Home Office, 2015, p.10). Some police services have currently done much more than others with respect to specialist training, Humberside, for example.

Secondly, those subjected to domestic abuse in the form of controlling and coercive behaviour need to have the confidence to come forward not just to charities, but to the police - and have trust that the police will take their complaints seriously.

A third issue is that of police and CPS resources in times of budget cuts and constraints on the public purse. The police services are already operating under severe workload pressures with respect to the volume of child abuse and domestic abuse cases in recent years. The section 76 offence could potentially result in a very large number of prosecutions. In a BBC news item, one police officer was reported as saying that he had a backlog of 170 domestic abuse cases, any of which could result in a murder (BBC, 2016b).

However, notwithstanding the current position with regard to the undoubted obstacles, the new section 76 offence is undeniably a landmark moment in the history of relationships law in England and Wales and a highly significant step forward in the protection of victims from the variety of forms in which domestic abuse manifests itself.

References

BBC News a (2016) 'Controlling partner Mohammed Anwaar jailed for 28 months' 28 May 2016 [online].

Available at <http://www.bbc.co.uk/news/uk-england-south-yorkshire-36322931> (Accessed 5 October 2016)

BBC News b (2016) 'Police train to spot coercive or controlling behaviour' 21 September 2016 [online]. Available at <http://www.bbc.co.uk/news/uk-37425917> (Accessed 24 September 2016)

Crown Prosecution Service (2015) 'DPP: Controlling and coercive behaviour can 'limit victims' basic human rights' as new domestic abuse law introduced' [online]. Available at http://www.cps.gov.uk/news/latest_news/new_domestic_abuse_law_introduced/ (Accessed 6 October 2016)

Crown Prosecution Service (2016) 'Violence against Women and Girls Crime Report 2015-16' [online]. Available at http://www.cps.gov.uk/publications/docs/cps_vawg_report_2016.pdf (Accessed 5 October 2016)

HM Government (2011) 'Call to End Violence Against Women and Girls: Action Plan' [online]. Available at <https://www.gov.uk/government/publications/call-to-end-violence-against-women-and-girls-action-plan> (Accessed 7 October 2016)

Hill, A. (2016) 'Police failing to use new law against coercive domestic abuse', *The Guardian*, 31 August 2016 [online]. Available at <https://www.theguardian.com/society/2016/aug/31/police-failing-to-use-new-law-against-coercive-domestic-abuse> (Accessed 6 October 2016)

Home Office (2013) 'Domestic violence and abuse' [online]. Available at <https://www.gov.uk/guidance/domestic-violence-and-abuse> (Accessed 7 October 2016)

Home Office (2015) 'Controlling or Coercive Behaviour in an Intimate or Family Relationship: Statutory Guidance Framework' [online]. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/482528/Controlling_or_coercive_behaviour_-_statutory_guidance.pdf (Accessed 7 October 2016)

Kerley, P. and Bates, C. (2016) 'The Archers: What effect has the Rob and Helen story had?' [online]. Available at <http://www.bbc.co.uk/news/magazine-35961057> (Accessed 23 September 2016)

Cases

R v Mohammed Anwaar [2016] (Unreported)

***R v R* [1992] 1 A.C. 599**

Legislation

Serious Crime Act 2015 c.9

International Instruments

UN declaration on the Elimination of Violence against Women [1993] A/RES/48/104

