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'An Offence We Could All Do With Learning More About': Identifying and Responding to Coercion in Intimate Partner Relationships

Key Findings Summary Report



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Background to the Research

In the past decade, significant strides have been made in the criminal law's recognition of, and capacity to respond to, harms arising in the context of domestic abuse that do not fall within existing frameworks for criminalising physical or sexual violence. In a move that has been advocated by many domestic abuse specialists for some time (Scott, 2020), legislation has been passed that creates the potential for a more holistic legal understanding of the dynamics of abusive behaviour. Such legislation targets, in particular, the patterns of coercion and control - often manifest through forms of emotional abuse, financial control, or orchestrated surveillance or social isolation - that operate within intimate relationships to cement, support and even supplant the use by perpetrators of physically aggressive or sexual violence.

In England and Wales, the legal framework for recognising such coercive control was initiated via s. 76 of the Serious Crimes Act 2015 (hereafter 'SCA'), which established an offence where a person (i) repeatedly or continuously engages in behaviour towards another to whom they are personally connected that is controlling or coercive, (ii) that behaviour had a serious effect on the other person such that it caused them serious alarm or distress having a substantial adverse effect on their daily activities or causing them to fear on at least two occasions that violence would be used against them, and (iii) the perpetrator knew, or ought to have known, that the behaviour would have this serious effect on the person to whom it was directed.

Though investigative and prosecutorial backlogs have impacted on the justice journeys of domestic abuse survivors substantially during and beyond the Covid-19 pandemic (Nott, 2022; Scottish Government, 2023), there is evidence of growing utilisation of this offence since its implementation. The police in England and Wales recorded 35,954 s. 76 offences in the year ending March 2021, compared with 24,856 the previous year (ONS, 2021); a significant leap from a total of 4,246 in 2016/17 (ONS, 2017). In contrast, the number of prosecutions, whilst growing, remains low (ONS, 2019). The charging rate for domestic abuse generally has been decreasing year on year, with a total of 54,515 offences charged in the year ending March 2021 (ONS, 2021). Indeed, a recent review of the s. 76 offence carried out by the Home Office showed that, while the numbers of prosecutions for coercive control have been increasing year on year, as a proportion of all domestic abuse charges, they continue to represent only a small share, and the majority of such offences are finalised for 'evidential difficulties' (86%). This reflects a rate even higher than that for other 'domestic abuse' related offending (78%), which has also been noted to be problematic (Home Office, 2021).

Thus, whilst the growth in police recording and prosecution of the s. 76 offence suggests a positive trend towards greater recognition of the offence, justifiable concerns remain regarding its relatively low usage in the wider context of the vast volume of domestic abuse related incidents reported to police in England and Wales (Barlow et al, 2020). Further, Robinson et al (2018) have documented ongoing difficulties both with the appropriateness of risk assessment tools as well as with the attitudes of frontline police officers who utilise those tools, which they conclude are likely to continue to undermine the potential of the s76 offence. Similarly, Barlow et al (2020) have noted that extra training and resourcing is needed to ensure the effective identification of these offences by police, with the development in particular of a gender-sensitive understanding of the harms and behaviours involved being required. In addition, others have raised concerns about potentially significant challenges encountered at the prosecution stage, in particular, because the model of repeated and continuous controlling or coercive behaviour envisaged in this legislation is often an unfamiliar one for those who argue, judge and decide such cases (Bettinson & Robson, 2020).

Meanwhile, in Scotland, the Domestic Abuse Scotland Act 2018 (hereafter 'DASA') adopted a somewhat different approach to the framing of an offence designed to address these complex forms of non-physical and emotional abuse. While section 76 was designed with a view to capturing behaviour that was not already covered by existing criminal laws in England and Wales (Weiner, 2020; 2023), the DASA provisions aimed to take a more holistic approach, creating a bespoke offence that targeted the wrongdoing at the heart of domestic abuse, including - where necessary - behaviours that were already criminalised under existing offences (Burman & Brooks-Hay, 2018). The DASA offence is designed to place the emphasis on the behaviour of the accused rather than on the severity of its effects upon the victim, and it targets only partner or ex-partner relationships rather than wider family relationships (Cairns, 2017; Cairns and Callander, 2022). Thus, section 1 DASA creates an offence where a person (i) engages in a course of behaviour which is abusive to a partner or ex-partner, (ii) they intend or are reckless as to whether that behaviour will cause physical or psychological harm, and (iii) a reasonable person would consider the behaviour likely to cause such harm to the recipient. It defines 'abusive behaviour' as that which is violent, threatening or intimidating, or which has, or would reasonably be understood to have, as one of its purposes making the recipient dependent on or subordinate to the perpetrator, isolating the recipient from sources of support, controlling or regulating their daily activities, depriving or restricting their freedom of action, or otherwise frightening, degrading, humiliating or punishing them.

Even more so than its counterpart in England and Wales, the conjunction in timing between the implementation of DASA and the Covid-19 pandemic has complicated the ability to properly evaluate its uptake and outcomes to date (Scottish Government, 2023). In 2021/2, there were 33,425 charges reported by police to the Crown Office and Procurator Fiscal Service with a domestic abuse identifier. This reflects a 9% increase on the previous year, with a pattern over the past decade of increasing referral to solemn (jury) trial rather than summary (sheriff) level (from 10% in 2013/14 to 20% of cases in 2020/21). The vast majority of these offences remain, however, for Breach of the Peace, Common Assault or Crimes against Public Justice, with only 1,581 involving charges under s. 1 of DASA in 2020/21 (1,496 of which proceeded to court, and in 31% of cases those charges were heard at solemn level via a jury trial) (Scottish Government, 2021). While the effects on recording, prosecution and conviction are yet to be determined, then, one thing that is clear is that the roll-out of the offence in Scotland involved a more substantial investment in professional training and public education than in England and Wales. As we discuss below, in a context in which the positive impact of specialist training has been documented (Brennan et al, 2021), this in itself matters.

The Present Study: Aims & Methods

Against the backdrop of these recent and potentially ground-breaking legislative developments in both jurisdictions, the aim of this project was to explore the ‘on the ground’ experience of their implementation, with a view to learning lessons within and across jurisdictions in terms of the framing of offences, investigative and trial process, and wider training and education around the complexities and harms of domestic abuse. We also set out in this study to probe, and reflect upon, the potential precarity of the more contextual understandings of coercive control that these legislative reforms were intended to bolster. In particular, we sought to juxtapose experience in relation to implementation of these offences with that arising in situations where coercive control prompts victims to themselves commit criminal offences (including, but not limited to, assaults arising from ‘violent resistance’) or take their own lives. Our hypothesis was that perceptions amongst participants regarding those latter actions, the agency with which they were undertaken, and how they ought to be responded to, might open up more challenging understandings of coercive control’s effects.

To explore these issues, from mid- to late-2021, we undertook a series of semi-structured interviews with professional stakeholders, which we triangulated with a review of existing academic and policy literature regarding the background to and implementation of section 76 SCA and section 1 DASA respectively. Interviews were conducted with the approval of gatekeepers in relevant police force areas, the Crown Office, Magistrates Association and College of Justice, and completed in accordance with ethical approval granted by the University of Warwick Humanities and Social Sciences Research Ethics Committee. All of the interviews were recorded, transcribed and coded for subsequent qualitative analysis using Nvivo. In total, as illustrated in the table below, we spoke with 20 participants in Scotland (comprised of 5 Police Scotland officers, 6 Crown Office Prosecutors, 6 Sheriffs, and 3 Third Sector DA Specialists) and 25 participants in England & Wales (comprised of 12 Police Officers across 2 force areas, 7 Magistrates, and 6 Third Sector DA Specialists or campaigners). Access was also requested to interview Crown Prosecution Service colleagues in England and Wales, but the delay on obtaining approvals meant that it was not possible in the present study. Participants had a range of experience and were recruited across a diverse geographical area.

Stakeholder Group	Scotland	England & Wales
Police	5	12
Prosecutors	6	n/a
Judicial	6	7
Third Sector	3	6
Total	20	25

In this Key Findings Summary, we highlight data and reflections across three substantive themes: (1) the challenges and opportunities encountered in identifying, and defining within legislation, the scale and complexity of the harms associated with domestic abuse; (2) the challenges and opportunities encountered in successfully evidencing and prosecuting coercive control offences; and (3) the challenges and opportunities encountered in acknowledging coercive control and its effects where victims commit crime or take their lives.

(1) Challenges & Opportunities in Identifying the Scale and Complexity of Harms

Interviews with police officers, across both jurisdictions, revealed that most thought that there had been significant changes in attitudes and approaches to policing domestic abuse in the past decade, and particularly in the period of time since the new offences had been introduced. Many officers of longstanding experience commented upon how differently domestic abuse was conceptualised and treated now, in comparison to when they joined their forces a decade or more prior. This was encapsulated in the words of one officer:

'As a young PC attending domestic abuse cases back in 98, I think it wasn't really, I mean it wasn't, you know, it wasn't glossed over but it wasn't considered as serious as it is now....So, you can attend a job and, you know, the door was answered by a victim, who may have some injuries, doesn't want to do anything about it. You recorded the details and generally, you just left that house with the perpetrator and the victim still in the home.... [T]hankfully, things have changed' (Police 5).

In general, this shift in attitude and approach within policing was also acknowledged across other criminal justice professionals. Scottish prosecutors reflected, for example, on the way that policing had changed; with greater recognition of the seriousness of domestic abuse and the different forms that it can take. They spoke of improvements in police identification of domestic abuse, and also reflected on changed attitudes amongst prosecutors themselves. As one interviewee with many years' experience in the Procurator Fiscal's Office commented:

'I'm old enough now to still remember actively hearing people say the horrible line, it's just a domestic, you know, that sort of trope, I'm old enough for that. But I'm glad to say that it's moved on massively between then and now, it's like night and day...' (Prosecutor 3)

The judiciary too expressed the view that there had been significant developments in professional understanding. One Sheriff observed, for example, that he had no doubt that harms now rightly identified under DASA as abusive had been neglected or not understood in the past, and he welcomed the more accurate 'labelling' that was now available in legislation:

'For the last twenty five years, I dare say more even, I've been dealing with coercive controllers, although it's relatively recently that that phrase has entered my consciousness, but they're the same manipulative, unpleasant so and so's as they've always been' (SHER 1).

Interviewees were asked what they thought were the key drivers in this shift in professional attitudes and approaches. Many attributed it directly to the change in the law. Prosecutors and judges alike often reflected that they felt the substantive criminal law had been a significant barrier to them identifying and responding to non-physical abuse prior to the introduction of specific legislation creating the offences of coercive and controlling behaviour. Thus, one interviewee, who had experience as both a prosecutor and a judge, commented:

'And certainly, over my working life, the approach ... has changed quite dramatically,... because a lot of the behaviours that underline how we look at coercive control at the moment, prior to the enactment of things like the Domestic Abuse Scotland Act and so on, that sort of controlling, psychological, manipulation, although it was always there, wasn't really something that the criminal law could tackle' (SHER 1).

Allied with changes in the law, many respondents also highlighted the importance of good training on domestic abuse in driving change in understanding and identification amongst justice professionals. However, it was evident from the responses that police officers across jurisdictions had variable experiences of training and not all felt that the training they had received was adequate. More specifically, in England and Wales, some officers reported

that they had only received online training on the changes under the SCA. They questioned the utility of that, sometimes feeling the need to supplement it by their own independent learning. As one put it:

'Just to brief us about the offences, what sort of things to look for. So, like the pattern of assaults and what have you...so that was pretty much blanket training for all officers. Apart from that, I'm struggling to think of any times I've had specific training about control and coercive, to be honest' (Police 3).

Meanwhile, Police Scotland participants tended to talk more confidently about building coercive control cases, mapped to training they received prior to DASA's implementation.

There was evidence of good practice in both jurisdictions - with one officer in an English force explaining, for example, that her leading a case to a successful outcome through effective evidence gathering had provided a model for other officers in the unit to follow (Police 9). However, given that the officers we spoke to were typically positioned in specialist domestic abuse units, the fact that concerns were expressed about the limited nature of their training on the section 76 offence in particular is undoubtedly concerning. There are issues here, of course, about the ambition of training programmes and their mode of delivery, and the scale of roll-out may be particularly challenging in the English and Welsh context given the large number of police forces who operate semi-autonomously. In the context of domestic abuse training, however, Brennan et al (2021) examined the impact of including an element of face-to-face learning, and concluded that this was more effective than e-learning modules. The benefits in the short term seemed to include an increase in arrests. However, the researchers also concluded that the effectiveness of the face-to-face training in this respect appeared to wane after a period of around eight months when the initial increase in arrest rates began to decline. This may underscore the need for an ongoing programme of face-to-face training.

Some of the police officers interviewed in this study had received the Domestic Abuse Matters training that was the subject of evaluation by Brennan et al (2021), and likewise reflected positively on it. PSCOT 2 believed that police evidence gathering in domestic abuse cases had improved because the DAM training was effective. Others felt that it has its limitations, but situated that reflection in a broader context of being somewhat more circumspect about the motivations behind training initiatives, suggesting they tend to be introduced in response to criticism rather than as part of an integrated programme of professional development:

'It's a standard process within all police organisations, well most organisations. When you get criticised around something, you try and put something in place to prevent that, which is what we should be doing. So, you know, there are cycles. ... and now it's DA Matters, which I think is really good. But it's not long enough, I think it's a day's input, you know, and you can't really learn, you can't learn domestic abuse in a training course anyway. I think you have to, you have to live and breathe it, I think, for many years before you can, I mean, like I say, I've been working for thirteen years as a specialist within domestic abuse and I don't know it. It's so complex, isn't it?' (Police 5)

This interviewee is right, of course, to reflect on the limits of what can be achieved in any training programme and the importance alongside such training of 'on the job' experience. At the same time, there is little doubt that some training is better than none (Bettinson, Munro & Burton 2023, forthcoming). That more training was needed, at both policing and prosecutorial level in England and Wales, was expressed by several police interviewees. As Police 2 put it, *'it's an offence we could all do with learning a bit more about.'* Without that training, they cautioned, that there were likely to be significant gaps in police understanding of charging standards and thresholds:

'Certainly, we didn't really get very much or any...coercive control training. I think we've just learnt on the job what it is. So, yes, there's going to be massive disparity between what officers may deem and what I would deem, like I do a lot of my own research because I'm quite sad' (Police 2)

Though views in relation to the adequacy of training were thus mixed amongst police officers, the prosecutors we interviewed – whom, it is important to recall were based exclusively in Scotland – had received mandatory training before they could undertake domestic abuse trials. They felt they had generally received adequate training on the new DASA offences, and domestic abuse more broadly (Prosecutor 6). The participation of specialist organisations such as Scottish Women's Aid and Assist were considered to be particularly useful here:

'The training we've had has been so eye opening...inputs from [Victim's groups] ... just go to help inform me as a male, someone who's been fortunate enough not to have grown up in an environment of domestic abuse' (Prosecutor 3).

The extent and value of voluntary organisations' contribution to the training of prosecutors was also highlighted by Prosecutor 1 who explained that *'part of our training now involves actually spending a half day with a victim support service as they help victims.'*

Whilst we were unable in this study to access the views of prosecutors in England and Wales and learn about their experiences of training, it is worth noting that previous researchers have raised concern about the level of training they receive, and suggested that further improvements are required (Bishop and Bettinson, 2018; Porter, 2019).

Police in England and Wales were more sceptical, however, about whether judges and magistrates received adequate training, and were clear in their views that there was need for more judicial understanding. On the whole, interviews with magistrates confirmed that this cohort were lagging behind in the training they received. Some magistrates sat in both the family and criminal courts and felt their experience across both jurisdictions gave them greater insight into the dynamics of abuse (MAG 6). However, even some magistrates sitting in specialist domestic abuse courts could not recall having any specific training on the section 76 coercive control offence. For others, though they had received some training, MAG 1 said:

'I think there would be quite a large swathe of magistrates, who would struggle to articulate what [coercive control] was from any kind of knowledge base.'

This is an important gap in the implementation of the new offence in England and Wales. Even with the most effective training in place in the early stages of the process, the objectives of the legislation are unlikely to be met if there is insufficient understanding of coercive control amongst decision-makers at court. Lack of understanding amongst the judiciary and juries can be frustrating for police and prosecutors as they anticipate cases failing at the later stages of the process, impacting their motivation in pursuing investigations (Brennan et al: 11).

This lack of understanding was also noted by prosecutors in Scotland, some of whom felt that judicial and juror appreciation of the dynamics of domestic abuse were lagging behind.

Whilst Sheriffs in Scotland have received training provided by Scottish Women's Aid, arguably placing them in a better position than the judiciary in England and Wales, there were ongoing concerns raised by interviewees about whether this knowledge was translating fully into the day to day practices and decision-making of the courts. As one Procurator Fiscal put it:

[W]hat is frustrating is some of the language from the bench, some of the language from defence solicitors, is still the language of twenty years ago ... And so, I'm not entirely convinced that judicial training, if it's mandatory, is effective. That may change as the generations of sheriffs are replaced' (Prosecutor 2).

Whilst this might seem, at first sight, like police and prosecutors shifting responsibility to other decision makers in the process, it is important to note that there was also a high level of acknowledgment by participants that all the various parts of the criminal justice system had more to do in terms of keeping abreast of developments and refreshing their understanding of how to respond to domestic abuse. This was encapsulated in a quote from one prosecutor:

'Refresher training, absolutely refresher training, so often organisations will, and it has to be judges, lawyers, both sides, police, not just, I've been on a course, tick box once and that's it, I now know all about this. Our understanding continues to grow all the time, let's just keep updating it and try and say, as part of the courses, this isn't the end, this is not the end. You're not sufficiently skilled, this is going to be part of the process, you go through it and keep expecting more training and keep wanting it and keep asking for more, keep trying to understand' (Prosecutor 3).

Even with adequate and ongoing training to identify domestic abuse, many of the professionals we interviewed noted difficulties of recognising coercive control, and distinguishing that from the 'ebb and flow' of an 'ordinary' non-abusive relationship. The notion that all relationships exist on a continuum has been written about extensively. Bettinson and Bishop (2015) have argued, for example, that controlling behaviour may be difficult to discern because it falls at the 'extreme end of a spectrum' that exists in 'normal' relationships, whilst Herring (2020) has observed that all relationships contain elements of control. This can make it hard for justice professionals to identify the relevant 'tipping' point.

Across our interviews, police and prosecutors expressed an element of uncertainty around 'acceptable' behaviour, and reflected on the ways in which this can make it more difficult to convince judges and jurors to recognise conduct as coercive and controlling. Conversely, some interviewees also relied on the existence of this spectrum to suggest that too liberal an interpretation may be apt to encourage people to claim to have been victims of domestic abuse erroneously. One prosecutor commented, for example, that being over-zealous in prosecutions does '*no favours*' since

'there is a human element to everything; and everyone's had an argument with their partner and it doesn't mean that it's a domestic abuse situation and it doesn't mean it's likely to become one' (Prosecutor 6).

Meanwhile, a police officer we interviewed commented that people may say that they are being controlled every day, but really they are

'complaining that they don't have the freedom to do what they want because they are in a relationship ... at the end of the day... you may have responsibilities and you can't just dump things and run off and go out with your mates or whatever all the time' (Police 7).

On the one hand, these comments indicate that justice professionals are alert to the difficulties of distinguishing between 'compromises' to make a relationship function and control. On the other hand, however, the tone of this last comment in particular underscores the importance of embedding training to ensure such assessments are not made flippantly or without adequate regard to the wider context of the relationship and an exploration of

the consequences of not complying with restrictions upon freedom (Myhill et al, 2022).

In this context, it is worth noting that there is a defence in s.76(8) of the SCA which allows, in relation to certain types of behaviour, the accused to argue they were acting in the best interests of the victim, and that the behaviour was 'reasonable'. Section 6 DASA has an equivalent, albeit less generous defence of reasonableness, related to whether the alleged behaviour can be described as abusive. The potential for abuse of such defences was highlighted at the time of enactment (Bettinson, 2016), and the suggestion that the alleged perpetrator was 'doing something nice' or 'looking after' the victim was discussed by several interviewees. Again, it was observed that this could make it difficult to identify coercive controlling behaviour, or certainly to evidence its existence in ways that jurors could be relied upon to conclude that the behaviour was unacceptable. One Sheriff observed, for example:

'You know, he bought flowers every Friday, isn't he lovely, isn't he lovely, but then when you set it against umpteen other weird and wonderful things that are occurring over that period, it suddenly doesn't sound so lovely anymore. But if you said to somebody, oh he buys her flowers all the time, it's hard to see how that's a bad thing; but it can be, depending on the context, or ... turning up at somebody's work with a furry teddy bear, it's either very sweet or downright sinister, depending on the background circumstances' (SHER 1).

Isolating victims from their friends and family, and monitoring their movements, were seen by interviewees as more obvious examples of coercive and controlling behaviour, but other types of behaviour were viewed, by some, as harder to identify. Financial control was often given here as a particular example. Though it might be easier to evidence financial abuse, because it can be documented through bank records and other paper / electronic trails, it was emphasised that it was the context of that evidence which was significant. Division of responsibilities in 'ordinary' relationships might lead to one partner having control over money: and as one police officer observed,

'controlling finances in a relationship is not criminal, it can be part of a normal relationship... behaviour which impacts on the victim so that they are no longer recognisable to family and friends as the person they used to be, that is criminal, but taking charge of finances is not CC' (Police 8).

These concerns regarding accurate identification of contexts of coercive control by professionals, as well as by the parties to the relationship themselves, also related to wider themes raised in interviews regarding the adequacy of public understanding of domestic abuse. In general, interviewees agreed there had been some important evolution in this respect, but felt that public understanding was often still lagging behind and that this was an obstacle to reporting and obtaining convictions. It was suggested that the public may be more aware of coercive control in Scotland due to targeted campaigns around the new offence. As one prosecutor put it,

'I think the coercive control provisions, where they are publicised and where there are good information campaigns behind them, I think they do have the potential to change attitudes towards how complainers are viewed and hopefully to erode, to an extent, the 'why did you not just leave' narrative' (Prosecutor 2).

Meanwhile, in England and Wales, where there were no such targeted campaigns when the section 76 offence was created, many respondents identified instead the inclusion of storylines in popular TV and radio shows, including 'Coronation Street' or 'The Archers', which they anticipated would have had some impact on public attitudes, thereby also increasing awareness of coercive control.

Broadly, participants remained of the view, however, that there was much more work to be done on informing the public about the nature of coercive control, and indeed that victims themselves would benefit from such campaigns because this was an obstacle to them identifying and reporting abuse that they were experiencing. As one Sheriff put it,

'I think society needs to understand a bit more that it's not charming to pursue somebody who's made it very clear that they're not interested ... that's not being romantic, that's being creepy, and that's a societal change. I think it will take a while until the general public maybe catch up with all of that, and for individuals to appreciate what they're experiencing may not be right' (SHER 1).

Likewise, a police officer reflected on the intersection between public and victim understanding, noting that victims will often still downplay non-physical aspects of their experiences, and may not instinctively bring them to police attention:

'There's times I've had victims that have reported assault and when I explain that this may be more appropriate to be dealt with as controlling and coercive behaviour, they don't know what it is' (Police 5).

(2) Challenges and Opportunities in Successfully Evidencing and Prosecuting Offences

With the introduction of new offences in both jurisdictions that focused on patterns of behaviour rather than single incidents, challenges and opportunities for investigating coercive and controlling behaviour were anticipated (Bishop and Bettinson, 2018). In England, the section 76 offence requires evidence of continuous or repeated behaviour. In Scotland, section 1 DASA requires the accused to engage in behaviour which is reflective of the course of conduct element found, for example, in section 38 Criminal Justice and Licensing (Scotland) Act 2010. Statutory guidance is provided for the SCA explaining what coercive control consists of and the forms that evidence can take in such cases (HO, 2015), whereas - as noted above - section 2 of DASA details in the body of the legislation what is to amount to abusive behaviour. In England and Wales, prosecutions can proceed on the basis that both the merits and public interest elements of the Full Code Test are satisfied.¹ Though this requires evaluation of the weight of evidence, it lacks the formal corroboration requirements that remain in Scotland, whereby the core aspects of the charge must be proved by two independent sources of evidence (Davidson and Ferguson, 2014). The case of *CA v HMA* [2022] HCJAC 33 has determined that, provided that there is a unity of purpose in the behaviour and at least two incidents of abusive behaviour are corroborated, the remaining abusive behaviour that forms the course of conduct does not require corroboration.

Regardless of these definitional and structural differences, one shared experience across jurisdictions, in respect to evidencing and prosecuting the new coercive control offences, has been that the need to establish a pattern of behaviour has led to lengthier and often more complex investigations (Bettinson, Munro and Burton 2023, forthcoming). Police officers in England and Wales, in particular, reflected on this with a level of concern and even frustration regarding the resource investment involved. As one put it, the section 76 offence is *'so difficult to prove because you need so much evidence'* (Police 3).

In the same vein, another said that building a coercive control case is

'very in depth, you have to go looking back months, years, build a lot of evidence in various things, and there's just no way officers have the time to be able to put those kind of cases together' (Police 10).

The same officer explained, therefore, that when the Crown Prosecution Service asked police to investigate a coercive control case, *'it brought about a hell of a lot more work to try and build it ready for trial.'*

Frustration at this was compounded by the belief that the additional work was not always a good use of officers' time: *'you have a very large case file with an awful lot of material, for then what ends up being treated in the courts as not the most serious of offences'* (Police 11).

And it was this combination of intensive resource requirements and prospectively low sentencing outcomes which another officer indicated lay behind why the offence was - in their opinion - currently *'underused'* (Police 3) (See also Myhill et al, 2022).

Given the increased workload that participants believed coercive control cases involved, it is perhaps unsurprising that resources were mentioned as a key inhibitor to conducting large-scale investigations. In England, there was a strong consensus that there were just not enough time and resource available to officers to do more and this was also voiced by other professionals including frontline domestic abuse organisations and the magistrates:

'when it comes to the bobby on the beat it's a case of resources, it's a case of time' (MAG 6).

1 <https://www.cps.gov.uk/publication/code-crown-prosecutors>

In Scotland, by contrast, officers seemed more comfortable with having the time needed to run these investigations, with one Prosecutor also noting that, in their assessment, the policing resources needed to continue were generally available (Prosecutor 2). However, it became clear that what the officers meant was that their specialist units were often well resourced, and not all of Police Scotland would have the same time available (PSCOT 5), a point also highlighted by HMICS (2023).

In both jurisdictions, frontline officers were not considered to have sufficient time and resources available, and were thought to be lacking the skills to properly respond to coercive control cases. For example, one police officer in England commented on good practice within specialist units but noted that the *'pace of change on the ground is slower'* (Police 7).

This is regretful, albeit understandable, because where officers are not knowledgeable about domestic abuse, cases may be dropped or never properly identified, leaving victims at risk.

Police officers in Scotland also commented upon the complexity and increased scale of their investigations under DASA. As one put it,

'our inquiries have become much bigger than they would have been a few years ago because you're looking to speak to more people if you can ... just any small thing they may have noticed' (PSCOT 2).

Corroboration was not, however, seen as a particular *'stumbling block'* (PSCOT 5) in this context, and in fact some officers reflected that the shift under DASA had perhaps been less challenging for them than their English and Welsh counterparts precisely because officers were already accustomed to looking for corroborating evidence. As one put it,

'it does make our job a lot easier... Predominantly, our investigations are taking about six months to complete, [in part]...because we're looking to try and get every little piece of information we can to make our investigation as tight and as solid as possible,... and report that all to the Procurator Fiscal for them to just have a full picture of what has happened' (PSCOT 4).

This prior investigative practice, together with the fact that section 1 of DASA is intended to be viewed as a serious offence with a maximum penalty of 14 years' imprisonment, was likely to lie behind the fact that, notwithstanding reminiscent resourcing concerns, the Scottish police officers spoke with less frustration about case-building.

To build cases of coercive control, investigators are required to gather a wide range of different kinds of evidence. The type most frequently referred to was third party evidence: family, friends, work colleagues and GPs, followed by text messages. Scottish participants, in particular, talked about the benefits of information that attested to changes in the victim's day to day activities, with examples given including calling friends or family less frequently, or being dropped off and picked up from work, when previously that wasn't the case.

Participants also indicated that a significant number of cases now include evidence contained in text messages, whether between the parties or from the victim to others. One Magistrate noted, for example, that they had not seen so many text messages *'in all my life as in these last two years'* (MAG 6).

The usefulness of such evidence was explained by SHER 1:

'we get these great chunks of conversations between partners and ex-partners that starts out

fine ... and swiftly degenerates into something utterly inappropriate. It's much easier to put that to them in the cold light of day when they're sitting in court. And it's a lot more difficult to explain then why typing that seemed a good idea at two in the morning when they were drunk.'

However, as has been well-documented also in respect of sexual offences, collecting such information from victims' phones can be distressing and inconvenient especially if the process is lengthy (HM Government, 2021, 8; HMICS, 2023). If this is not to act as a barrier to victims' support of investigations, use of such material must be sensitive and proportionate.

Another source of evidence that was often pointed to by participants was the testimony of prior partners of the accused, which could be drawn upon to establish a pattern of abuse. Though this could provide powerful confirmation of the victim's account, Scottish officers, in particular, reflected on the difficulties that ex-partners might experience when speaking to the police and several appreciated the sensitivities associated with triggering past trauma, particularly where the perpetrator was still in the community and the witness could justifiably be fearful of reprisals for supporting an investigation (PSCOT 3 & 4). Though we did not probe during interviews as to what exactly had informed those reflections, the influence of training and collaboration with domestic abuse agencies in Scotland is likely to have had an impact.

The effect of this more trauma-sensitive approach was also evidenced in police comments regarding victim engagement and credibility. Indeed, by and large, police officers in the English forces showed a greater concern than their Scottish counterparts with the risk that the victim themselves might be seen to weaken the case. English officers did express an understanding of the reasons why a victim would be hesitant or not feel able to support a prosecution. They also acknowledged that building evidence-led cases had been encouraged, with its use to be increasingly expected following criminal justice inspectorate reports endorsing this approach (HMICFRS, 2020). At the same time, they underscored that lack of victim engagement meant having to build larger and more complicated cases to support an evidence-led prosecution. Officers also expressed concerns about how victim credibility could pose difficulties where testimony was forthcoming, especially if the victim had substance misuse or mental health issues. In particular, officers observed that this could provide an opening for the abuser to attribute changes in the victim's behaviour to such vulnerabilities rather than to any abuse, and failed to challenge such strategies with evidence that substance misuse may well be a coping strategy and consequence of abuse, as may mental health issues.

The difficulties with this may be particularly pronounced in England and Wales, where s. 76 requires evidence that the coercive and controlling behaviour had a specific impact on the victim. By contrast, police in Scotland were generally keener to recognise the importance of the victim's needs in the investigation and prosecution, and to not see their participation as the 'be all and end all' of the evidence-building process. One police officer described their approach as '*victim-centred not victim-led*' (PSCOT 1), for example, and underscored how this allowed them to continue to investigate the abuse even if the victim had disengaged. This, he suggested, was important since, if the police did not pursue further enquiries,

'we leave them [victim] at risk and ... the state has a duty to look after victims of abuse' (PSCOT 1).

Notwithstanding this view from police in Scotland, and the fact that the framing of DASA does appear to lend itself more easily than the SCA to evidence-led prosecutions, it was also clear that judicial participants in both jurisdictions shared a pessimism regarding the prospects for conviction in such cases. SHER 5 remarked that

'the Fiscal, with all the best efforts ... in the world, is struggling without the victim coming to court.'

Contrasting this with cases in which the victim is in attendance, that same Sheriff went on to reflect that where the victim *'speaks up'* at court, there is

'not a great difficulty for me in dealing with a case like that and being satisfied'.

This is not to say that Sheriffs were not also alert to the difficulties of testimony-giving – indeed, as SHER 1 put it, at trial it can be difficult for a victim to explain verbal and emotional abuse, since

'the system's so very much set up on the assumption that things happened at such and such a place on such and such date.'

Indeed, the Scottish Government recently found that victims reported that giving evidence had been distressing for this very reason, alongside lengthy questioning and cross-examination (Scottish Government, 2023: 26). Amongst Magistrates in England and Wales, victim presence and participation at court was also an influential factor, with interviewees remarking that defence lawyers can and will use the absence of the victim to their advantage, arguing it demonstrates that the abuse did not happen (MAG 1). In addition, other magistrates emphasised the importance of the victim impact statement to their decision-making after conviction (for example, MAG 4).

In line with the comments of police officers and prosecutors in the jurisdiction, the Scottish judiciary agreed that they were seeing extensive evidence gathering in the DASA cases that came before them, noting that this translated to more work for prosecutors and longer trials:

'It has been very difficult for prosecutors, I have to say, because my experience of it has been that the police have taken very lengthy statements from victims, and prosecutors of course have to consider all, and ... fairly regularly, multiple statements from victims, because we are talking about lengthy periods. I think it's translated into much lengthier charges being prepared by the prosecution, and it has also led to lengthier trials' (SHER 6).

Adapting to cases that require evidence of non-physical injury appears to have been particularly difficult. Indeed, one police officer in a force in England indicated that, in his opinion, the challenges involved in such cases meant that pursuing the offence was *'pointless'* (Police 12). Judicial participants likewise expressed concerns about meeting the criminal standard of proof in such cases. For magistrates, they felt proving coercive control under the SCA offence was difficult *'because it is so subjective'* (MAG 2) and that *'trying to really be sure, beyond reasonable doubt, that it has taken place, ... is tricky'* (MAG 3).

They continued to hold to the view that physical harm was easier to recognise than coercive control since police need to point to *'hard evidence'* (MAG 5), and one Magistrate reflected that, since the cases that she tended to see still involved evidence of physical violence, there was a likelihood that other cases were not coming to court due to police or prosecutorial hesitance:

'I suspect because the prosecution feel they won't be able to convince us in court, unless it has got to a really bad state, and they've got some strong evidence of what's been going on ... we perhaps don't have to deal with the more subtle judgments about is this controlling or not' (MAG 7).

These responses add credence to the concern that the s. 76 offence is currently underused (Brennan et al, 2019) and that prosecutors are reluctant to charge it unless considerable evidence has been gathered. It also suggests that concerns prior to the legislation's enactment that the offence set too low an evidential bar have not been born out (Burman and Brook-Hays, 2018).

It was clear in discussions with police officers in England that the interface between policing and CPS decision-making in implementing coercive control offences had at times been challenging. Officers suggested that there was inconsistency in prosecutors' decisions regarding whether or not to pursue a section 76 charge, which left them unclear as to the evidential expectations and thresholds being applied. As one put it,

'it's not completely clear where the bar is set...I'd like to sit down with a CPS lawyer and say, what do you expect, what are you looking for in terms of evidence?' (Police 6).

Another described pursuing a charge as requiring *'a real battle'* with the CPS, querying

'what more evidence do you [CPS] need to get on board with this? ... they're very wary to charge coercive control' (Police 8).

Of course, in the context of these findings, it is particularly important to recall that we were not able to speak with CPS prosecutors in the present study in order to explore their experiences of implementing section 76 and to obtain clarity on their decision-making criteria and process.

By contrast, in Scotland, police and prosecutors described a more comfortable relationship, supported by the existence of a Joint Protocol (2019), which they largely felt had improved collaborative working practices and promoted good communication. As Prosecutor 1 put it:

'the whole genesis of the DASA legislation is built on collaborative working between prosecutors, the police and also, really importantly, the voluntary sector ... we're also helped by the fact we've had a joint protocol between the police and COPFS for a long time now. So, there was always a joint understanding of the importance of domestic abuse, but the fact that we've worked together so closely with the police on domestic abuse helps both organisations to almost jointly increase our understanding of coercive control.'

This is encouraging, but the successful implementation of DASA requires effective collaboration across all stages of the justice process; and there was a lingering perception amongst judicial participants that the prospects for proving a case to the criminal standard where there was no evidence of physical abuse were remote. As one Sheriff put it,

'by and large [the abusive behaviour] will have taken place in private, certainly without many witnesses, possibly without any witnesses, and possibly without witnesses who might be regarded as independent' (SHER 3).

Thus, providing necessary corroborative context to this required the gathering of additional and alternative forms of evidence (as discussed above).

Challenges & Opportunities in Acknowledging Coercion in All Contexts

Challenges undoubtedly remain, in both jurisdictions, regarding effective identification and risk assessment of coercive or controlling behaviour, and robust investigation and prosecution of offences as a consequence. However, our data also indicates that – particularly amongst those who have undergone specialist training in relation to psychological, emotional and financial forms of domestic abuse – there is a growing appreciation of the need for holistic understanding of the nature and severity of harms, and complexity of behaviours, involved.

Despite this, it was clear that, in respect of other contexts in which coercive control might be engaged as an issue, outside of the question of a perpetrators' liability towards an acknowledged victim, participants had substantially less nuanced understandings of how to navigate the complexities involved. This often resulted in a tendency amongst participants to diminish the impact of such abuse on victims' freedom and agency, even though in discussions around the offence, they had often emphasised its all-consuming nature in that respect (see Munro, Bettinson and Burton, 2023).

More specifically, when asked about potential connections between a victim being subjected to coercive control and themselves committing criminal offences, interviewees' responses were often marked by a lack of confidence. Participants observed that *'if they're committing crime because they're being forced to do so, you'd like to think that would be massively mitigating'* (Police 2) and assured the researchers that *'it's certainly something that we'd identify if it screams out to us'* (Police 5).

But without further probing, most engaged with this issue only in relation to 'dual perpetrator' cases, where participants emphasised that *'you should never be arresting both parties...you should always be trying to establish...what has actually happened'* (Police 2).

Occasionally, this was situated alongside reflections on high-profile cases, the most often cited being that of Sally Challen, where being subjected to coercive and controlling behaviour was recognised as a mitigation to homicide (Burton, 2023, pp.159-165; The Guardian, 2019). Broadly, this outcome was welcomed, with participants lamenting doctrinal requirements tied to the proximity of threat or proportionality of response that did not accommodate the dynamics of domestic abuse.

However, the significantly more frequent scenario in which women who have experienced domestic abuse are convicted of low-level acquisitive or drug related offences was not raised instinctively by many participants (Prison Reform Trust, 2017). Third sector interviewees, often prompted by the unsuccessful campaign by Prison Reform Trust to create a statutory defence for victims of domestic abuse that mirrored the framework in place for victims of modern slavery, did address this issue (Prison Reform Trust, 2019). One remarked that

'we hear it so often, how women end up committing offences just because of the pressure that they're under in the relationship' (Third Sector 1)

whilst another observed that

'we have lots of clients who are coerced by the perpetrator to commit benefit fraud' (Third Sector 5) and another confirmed that

'we do see that ... things like, you know, limiting her access to money so she can't buy nappies or food for her kids and that causes either shoplifting or other kind of behaviours' (Third Sector 3).

Such participants underscored the difficulties of recognising and responding to this using existing defences, and suggested there's an *'unwillingness to engage on such minor*

offending' (Third Sector 1) at both policy level and in the mechanics of professional criminal practice (see, further, Bettinson, Munro & Wake forthcoming).

These contributions stood in contrast to those of most justice professionals, however. Some insisted that this was simply not something they had encountered – as one interviewee put it

'examples like that, where complainers have been sort of compelled into doing certain things ... [are] quite rare' (Prosecutor 6).

Meanwhile, others acknowledged that such scenarios do arise, but reflected on the challenges they raised, both substantively and procedurally. As one put it,

'you do often get these cases coming in and it's hard to know what to do with them' (Prosecutor 2),
whilst a police officer remarked

'we're much more sympathetic to victims who perhaps assault a partner because they've just had years and years of coercive control and they've just snapped ... Where I think we struggle to know what to do is, for example, where you might get someone arrested for possession with intent to supply and the defence is, well, I didn't want to do it but my abusive partner made me do it ... that's a tricky one' (Police 6).

Often these participants went on to point out that there are a variety of reasons why a person might commit an offence – *'being in a controlling relationship might be one factor, but not the only factor' (Prosecutor 4)* – and that it was important to acknowledge a level of choice that remained with the victim to commit the criminal act:

'it's the same as if someone is an alcoholic, which isn't their fault and it is a recognised illness, but you can't blame every offence you commit on being drunk' (PSCOT 2).

Indeed, as one Sheriff put it, *'that's a messy can of worms to start picking apart' (SHER 1).*

Many participants noted, moreover, that it was not only a challenging issue in respect of 'genuine' victims, but that recognising the effects of coercive control to reduce or absolve liability would be open to abuse. Several interviewees invoked the language of *'a get out of jail free card' (Police 8)* in this respect. One police officer noted,

'I could go on an offending spree and then claim I'm being controlled, and people will do this, we know that's human nature' (Police 1),

whilst another observed that

'it would be easy for victims to say they're a victim of controlling and coercive behaviour ... we'd have to be careful with throwing it around willy-nilly, as opposed to using it in genuine cases' (Police 3).

For others, the concern was less about widespread abuse and more about the appropriate stage in the criminal justice process for such context to be taken into account. As one police officer put it *'at the end of the day, it's up to the jury to decide....I just investigate stuff' (Police 8);* similarly another observed

'that's ultimately for the sheriff to decide...as police officers, yes, I use my discretion when I need to...but if crimes are being committed, we're duty bound to investigate and report the circumstances ... to then be brought before court' (PSCOT 3).

Meanwhile, prosecutors noted that *'our role is as a prosecutor, we see an offence, we will*

prosecute it' (Prosecutor 3) and reflected that 'we would probably be quite risk averse in that situation...we would probably mark it for court and say we'll see how it comes out in the trial' (Prosecutor 5).

Though this may reflect the different institutional logics of the limbs of the justice process, it understates the overarching commitment to consider public interest.

What is more, as several Third Sector interviewees noted, even if mitigation is successful at trial, the victim-accused has had to go through the distress of the trial process. Moreover, while some justice participants highlighted the benefits of adversarialism, insisting *'if their defence lawyer is doing their job properly, they can explain why it is that a person isn't guilty or guilty but less so because of these various reasons'* (MAG 2), the speed and resource with which low-level offences are tried raises questions about whether an evidenced account of coercion will be put forward or even whether a victim will be able to disclose (CWJ, 2022).

Though some Sheriffs and Magistrates did indicate they would be sympathetic to arguments heard at trial about the impact of coercive control in precipitating criminality, it was clear that for many this would be unlikely to absolve responsibility - as one put it, *'ultimately, they must know that they're doing wrong'* (MAG 5).

Meanwhile, another judicial participant - echoing the problematic logic of the 'why didn't she just leave' trope - emphasised the need to establish that: *'there is no option for you to get away, go to the police, do something different'* and noted that it would not suffice *'if you're taking the view that continuing a relationship with [the abusive partner] is more important'* (SHER 1).

For others, its relevance appeared to be contingent on the perceived severity of threat - as one put it, *'I think we'd probably have less sympathy for [coercive control] than we would the more serious side of things'* (MAG 5), which he suggested would extend to threats of harm to a child, dog or criminal damage - or the respectability of the accused.

One magistrate, for example, recounted a case involving *'a lovely, lovely woman, who had been a fairly prolific shoplifter'* after leaving her home to escape domestic abuse. Noting that there was something *'almost elegant about her,'* he reflected:

'I suddenly realised this was a middle-class woman who had just hit really bad times...she was a criminal because she committed offences, but she wasn't a criminal: that wasn't her nature, but she'd been forced into it by her circumstances' (MAG 2).

Though this recognition of coercive circumstance is important, it was far from clear that the same level of sympathy would have been afforded to the sizeable majority of female offenders who, alongside histories of abuse, navigate chaotic lives and social exclusion; and this of course reinforces the concerns outlined above about the precarity of victim credibility in this context.

Though in many respects very different contexts with importantly distinctive pressures and issues at stake, the challenges that many justice professionals encountered in recognising the potential impact of coercive control in precipitating criminality by its victims were also mirrored in their reflections regarding its role as a cause of suicidality. In contrast to the substantial evidence base that indicates a co-occurrence if not connection between experiencing coercive control and female offending, the scale of the relationship between domestic abuse and suicide is unclear, though widely drawn upon estimates suggest that it is likely to be significant (Munro and Aitken, 2018; Munro and Aitken, 2020). This has raised questions regarding the appropriateness of holding perpetrators criminally liable

when victims take their own lives, and while legal authorities on this matter are somewhat inconclusive in both jurisdictions, we used this to explore participants' understanding of the issues at stake, in particular as to whether victims would be viewed as agentic in this context.

A clear finding here was the extent to which many participants, despite often working in the area of domestic abuse for many years, had never considered the existence and relevance of connections to suicide. Several interviewees, across all cohorts, were supportive in principle of the idea that there ought to be liability for perpetrators, given the inherent feasibility of the possibility that a victim might feel compelled to take her own life as a result of coercive control.

As one police officer put it,

'I'd be supportive of that because...the coercive control that they're under, that must feel like the only way out on some occasions' (Police 4).

Meanwhile, another observed

'if they're the reason somebody's decided to take their own life, I mean 100% there should be something, they should be held accountable for that' (Police 11).

But, echoing what was an overwhelming view, participants went on to note *'it would be a bloody nightmare to put together a case for that though wouldn't it?' (Police 10).*

In particular, many participants expressed concerns about their ability to evidence the causal connection that they considered would be required, particularly when the victim was no longer alive to attest to it. While one Sheriff described it as a *'hornet's nest' (SHER 4)*, a prosecutor observed *'if somebody is driven to take their own lives, there's not necessarily going to be one factor which has led to it'* and expressed concerns about the potential to simply tarnish the character of the deceased, with defence arguments focussed on establishing *'they were unstable, on all these drugs, they were constantly depressed, it wasn't my fault' (Prosecutor 2).*

The challenges of this when conviction requires convincing a jury who may be apt to *'oversimplify it, because they've not had those lived experiences'* was also raised by another prosecutor –

'in principle and in theory, it sounds like something we should be considering, but in practice, it probably would be really, really difficult...for a prosecutor to say, for example, this woman committed suicide because she suffered abuse and that abuse was he didn't let her go to the shops when she wanted, and the jury will say, well, hold on, I can't go to the shop when I want to, but I don't kill myself' (Prosecutor 6).

Of course, it is hardly likely that the main or only manifestation of abuse precipitating suicidality a prosecutor would draw upon in a case that made it to court would be one grounded in a partner's refusal to allow a victim to go shopping, and the choice of this example by the prosecutor is perhaps telling.

Moreover, while these participants were right to highlight some of the associated evidential difficulties in suicide cases, what is striking is the very high threshold for causation that they routinely invoked, suggesting a need for domestic abuse to be established as the cause of suicide rather than a substantial and operating one, potentially amongst others.

Alongside this, their typically staunch insistence that without a victim there would be no possibility of curating a compelling evidence base, sits somewhat uncomfortably next to their previous comments regarding the ability to gather information effectively from a variety

of sources to appropriately establish patterns of coercive control.

One police officer remarked, for example,

'I just don't see that we would ever be able to prove that...with such a personal crime....you never know what goes on behind closed doors' (Police 12).

There was also a somewhat contradictory approach to potential sources of corroboration, particularly those relating to mental health difficulties which were identified by one police officer as *'the best case scenario' (Police 5)* in order to evidence an impact of domestic abuse but by many others as a barrier to establishing a credible causal link to the accused's behaviour.

While the majority of participants were thus supportive of, or at least interested in, the possibility of pursuing perpetrators' liability for suicide in cases where evidential hurdles could be overcome, there was a small number of interviewees who were more dubious. For some, this was because they felt addressing it as an aggravating factor in existing offences would be more appropriate or because they considered investigative mechanisms outside of the criminal justice process (such as Domestic Homicide Reviews) to be more fitting. For others, it was because they felt it would ignore the responsibility that victims continue to hold for taking their own lives and be open to abuse.

One prosecutor we spoke to maintained that it was important to keep in mind that

'ultimately suicide involves an element of choice on the part of the victim' (Prosecutor 4).

A police officer, having observed *'the problem you have with domestic abuse is that a lot of victims need to take responsibility as well for some of their actions'*, went on to comment - with an apparent disregard of the complex dynamics of coercive control that participants pointed to when it was viewed as a solo offence -

'on the flipside of it, if I lose my job tonight and go home and kill myself because my boss has sacked me...does that mean then that my boss is held accountable for killing me?' (PSCOT 3).

Summary and Conclusion

Though relatively small scale, this research has revealed that there are a variety of opportunities and challenges in implementing the offences of coercive control in England and Wales and Scotland. The two jurisdictions have formulated the offences slightly differently, and this does make for some difference to how they are implemented, as well as some of the different evidential rules in Scotland. However, there are a number of commonalities across the jurisdictions; for example, the importance of training in shifting understandings and the significance of that training being adequate and regularly updated. Recognising and responding to coercive control requires a shift in thinking - towards patterns of behaviour and greater recognition of non-physical abuse. These shifts are happening, but the pace of change is greatest in specialist units and those who have received 'gold standard' training.

All the justice professionals we interviewed talked about the challenges of distinguishing coercive control from 'ordinary' relationships, where there is an element of 'compromise'. The types of evidence required to prove coercive control are not, necessarily, photos of physical injury, but text conversations, bank records and disclosures that depict emotional and financial abuse. Gathering such evidence is time consuming and requires police, prosecutors and courts to bring a fresh approach, which still navigates the risk of victim retraction.

The changes in the law to incorporate a substantive offence of coercive control have contributed to the shifting of attitudes and understanding amongst professionals. The public understanding and awareness of coercive control has also increased, particularly perhaps in Scotland, due to awareness raising campaigns. Nevertheless, there remains little appreciation of the potential role of coercive control in causing victims to offend or to take their own lives, and little scope within existing legal frameworks to appropriately attribute responsibility to perpetrators in those contexts. Taking seriously the lessons about the invasive impacts of coercive control upon victims arguably requires more urgent engagement with these issues.

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References

- Barlow, C. and Johnson, K. and Walklate, S. and Humphries, L. (2020) 'Putting coercive control into practice: problems and possibilities', *British Journal of Criminology*, 60 (1), 160-179.
- Bettinson, V. and Bishop, C. (2015) Is the creation of a discrete offence of coercive control necessary to combat domestic violence?. *N. Ir. Legal Q.*, 66, p.179.
- Munro, V., Bettinson, V. & Burton, M. (forthcoming) 'Coercion, Control and Criminal Responsibility: Exploring Professional Responses to Offending and Suicidality in the Context of Domestically Abusive Relationships' [manuscript in progress]
- Bettinson, V. (2016) 'Criminalising coercive control in domestic violence cases: Should Scotland follow the path of England and Wales?' *Criminal Law Review*, 3, 165-180
- Bettinson, V., Munro, V. and Burton, M. (2023) 'Going for Gold: Professionals' Perspectives on the Design and Implementation of Transformative Coercive Control Offences in Scotland and England and Wales' (forthcoming)
- Bettinson, V., Munro, V. and Wake, N. (2023) 'A One-Sided Coin? Attributing Agency and Responsibility in Contexts of Coercive Control.' In Child, J., Rogers, J. and Bone, M. *Criminal Law Reform Now Collection (Volume 2)* (forthcoming)
- Bettinson, V. and Robson, J., (2020) 'Prosecuting coercive control: Reforming storytelling in the courtroom' *Criminal Law Review*, (12), pp.1107-1126.
- Bishop, C. and Bettinson, V., (2018) 'Evidencing domestic violence, including behaviour that falls under the new offence of 'controlling or coercive behaviour'. *The International Journal of Evidence & Proof*, 22(1), pp.3-29.
- Brennan, I., Myhill, A., Tagliaferri, G. and Tapley, J. (2021) 'Policing a new domestic abuse crime: Effects of force-wide training on arrests for coercive control' *Policing and Society*, 31(10), pp.1153-1167.
- Burman, M. and Brooks-Hay, O. (2018) 'Aligning policy and law? The creation of a domestic abuse offence incorporating coercive control' *Criminology & criminal justice*, 18(1), pp.67-83.
- Burton, M. *Domestic Abuse, Victims and the Law* (Routledge, 2023)
- Cairns, I. and Callander, I., (2022) 'Gold Standard' Legislation for Adults Only: Reconceptualising Children as 'Adjoined Victims' Under the Domestic Abuse (Scotland) Act 2018. *Social & Legal Studies*, 09646639221089252.

Cairns, I.C.M. (2017) 'What counts as "Domestic"? Family Relationships and the Proposed Criminalisation of Domestic Abuse in Scotland' *Edinburgh Law Review*, 21(2), 262-268

Centre for Women's Justice, (2022) Double standard: Ending the unjust criminalisation of violence against women and girls Double Standard – Centre for Women's Justice (centreforwomensjustice.org.uk)

Davidson, F.P. and Ferguson, P.R. (2014) 'The corroboration requirement in Scottish criminal trials: Should it be retained for some forms of problematic evidence?' *The International Journal of Evidence & Proof*, 18(1), pp.1-27.

Davies, C. *The Guardian*, (2019) 'Sally Challen wins appeal against her conviction for murdering husband' <https://www.theguardian.com/law/2019/feb/28/sally-challen-wins-appeal-against-conviction-for-murdering-husband>

Herring, J. (2020) *Domestic Abuse and Human Rights*, Cambridge: Intersentia.

HM Government (2021) *End-to-End Rape Review Report on Findings and Actions* (HMSO:2021) <https://www.gov.uk/government/publications/end-to-end-rape-review-report-on-findings-and-actions>

HMICS (2023) *Thematic Review of Domestic Abuse - Phase 1* <https://www.hmics.scot/publications/hmics-thematic-inspection-domestic-abuse-phase-1-terms-reference>

HMICFRS (2020) 'Evidence led domestic abuse prosecutions' <https://www.justiceinspectorates.gov.uk/hmicfrs/publications/evidence-led-domestic-abuse-prosecutions/>

Home Office, (2015) *Statutory Guidance framework: controlling or coercive behaviour in an intimate or family relationship* *Statutory guidance framework: controlling or coercive behaviour in an intimate or family relationship - GOV.UK* (www.gov.uk)

Home Office (2021) *Review of the Controlling or Coercive Control Behaviour Offence*, <https://www.gov.uk/government/publications/review-of-the-controlling-or-coercive-behaviour-offence>

Joint Protocol between Police Scotland and the Crown Office & Procurator Fiscal Service <https://www.copfs.gov.uk/media/xjtd4i4p/in-partnership-challenging-domestic-abuse-joint-protocol-copfs-ps-may-2019.pdf>

Myhill, A., Johnson, K., McNeil, A., Critchfield, E. and Westmarland, N. (2022) 'A genuine one usually sticks out a mile': policing coercive control in England and Wales' *Policing & Society* Published online 18 October 2022

Nott, HH Judge E. (2022) 'Addressing domestic abuse before, during and after the COVID-19 pandemic: a perspective from within the criminal justice system of England and Wales' *Criminal Law Review*, 7, 525-544

ONS (2021) *Domestic abuse prevalence and trends, England and Wales: year ending March 2021* *Domestic abuse prevalence and trends, England and Wales - Office for National Statistics* (ons.gov.uk)

ONS (2019) *Domestic abuse in England and Wales: year ending March 2019*. Table 2 citing the Ministry of Justice (London: ONS, 2019)

ONS (2017) Domestic abuse in England and Wales: year ending March 2017 Domestic abuse in England and Wales - Office for National Statistics (ons.gov.uk)

Porter, A. (2019) 'Prosecuting domestic abuse in England and Wales: Crown Prosecution Service 'working practice' and new public managerialism' *Social & Legal Studies*, 28(4), pp.493-516

Prison Reform Trust (2017) 'There's A Reason We're In Trouble: Domestic Abuse as a Driver to Women's Offending'

Prison Reform Trust (2019) Written Evidence submitted by the Prison Reform Trust (DAB05) <https://publications.parliament.uk/pa/cm201919/cmpublic/DomesticAbuse/memo/DAB05.pdf>

Robinson, A.L., Pinchevsky, G.M. and Guthrie, J.A. (2018) 'A small constellation: risk factors informing police perceptions of domestic abuse' *Policing and society*, 28(2), pp.189-204.

Robinson, A Myhill, A and Wire, J (2018) 'Practitioner (mis)understandings of coercive control in England and Wales', *Criminology and Criminal Justice*, 18(1) 29-49.

Scott, M., (2020). The making of the new 'gold standard': The domestic abuse (Scotland) Act 2018. In M. McMahon and P. McGorerry (eds) *Criminalising Coercive Control* (Springer, 2020) (pp. 177-194).

Scottish Government (2023) Domestic Abuse (Scotland) Act 2018: interim reporting requirement <https://www.gov.scot/publications/domestic-abuse-scotland-act-2018-interim-reporting-requirement/>

Scottish Government (2021) Domestic abuse- statistics recorded by the police in Scotland 2020/1 <https://www.gov.scot/publications/domestic-abuse-recorded-police-scotland-2020-21/pages/3/>

Munro, V., and Aiken, R. (2018) 'Adding insult to injury? The Criminal Law's response to domestic abuse-related suicide in England and Wales' *Criminal Law Review* 9, 732-741

Munro, V. and Aitken, R. (2020) 'From hoping to help: identifying and responding to suicidality amongst victims of domestic abuse' *International Review of Victimology* 26(1), 29-49

Wiener, C. *Coercive Control and the Criminal Law* (Routledge, 2023)

Wiener, C. (2020) 'From Social Construct to Legal Innovation: The Offence of Controlling or Coercive Behaviour in England and Wales'. In M. McMahon and P. McGorerry (eds) *Criminalising Coercive Control* (Springer, 2020) pp 159-175

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