

Coercive control

How do you handle coercive controlling behaviour of both the children and the other parent, and what will the court do if it is found, supported by case law and practical examples?

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What is Coercive Control?

Definitions

- Coercive control is an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.
- This controlling behaviour is designed to make a person dependent by isolating them from support, exploiting them, depriving them of independence and regulating their everyday behaviour.

What is it?

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- Coercive control creates invisible chains and a sense of fear that pervades all elements of a victim's life. It works to limit their human rights by depriving them of their liberty and reducing their ability for action. Experts like Evan Stark liken coercive control to being taken hostage. As he says: "the victim becomes captive in an unreal world created by the abuser, entrapped in a world of confusion, contradiction and fear."

Government information
says this about coercive
control:

- This is a type of domestic abuse. The abuser uses violence, threats, puts them down or scares and frightens the victim. They do this to so they can control the victim and make them do things they don't want to. This behaviour often happens with other abusive behaviours, including physical, sexual and financial abuse.
- The government says controlling or coercive behaviour is:
 - acts designed to make a person feel inferior and/or dependent by keeping them apart from friends, help and support. It can include taking advantage of their money and things they have, stopping their independence, and controlling what they want to do.
 - an act of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish or frighten the victim.

'Coercive and controlling
behaviour' is defined in the
Family Procedure Rules
2010 PD12J:

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

For completeness,
domestic abuse is defined
more broadly:

- **"domestic abuse"** includes any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, psychological, physical, sexual, financial, or emotional abuse. Domestic abuse also includes culturally specific forms of abuse including, but not limited to, forced marriage, honour-based violence, dowry-related abuse and transnational marriage abandonment"

Criminal legislation

- The criminal legislation emphasises the repeated and/or continuous nature of this abuse. It highlights the serious alarm or distress caused by it, as well as the significant impact on the complainant's daily life, or to use the precise words of the statute its "**adverse effect on B's usual day to day activities**". Mr Barnett-Thoung-Holland recognises that in many circumstances coercive control can, as he puts it:
 - *"represent behaviours which **can be** (his emphasis) observably 'ordinary' occurrences in intimate or close relationships but which evolve beyond that over the transactional period or have a specific coercive meaning within the parameters of the relationship"*.
- He summarises the objectives of the legislation as:
 - i. The condition of knowledge of the impact on the part of the perpetrator;
 - ii. A continued series of transactions (there cannot, in this definition, be a single incident of coercive and controlling behaviour) and;
 - iii. the consequence of a substantial adverse effect on the complainant (be it via fear of applied violence or otherwise).

The case of F v M [2021]

EWFC 4

Hayden J

- One of the first known cases to look with care at what this type of behaviour is, how to plead it and how to understand it. The judgment was handed down on 15 January 2021. The hearing had lasted over 10 days.
- It was acknowledged by the judge that there had at that stage been very little reported case law in the family Court considering coercive and controlling behaviour. The judge commented that it required greater awareness and more focused training for the relevant professionals (para 4).

Hayden's important guidance and assessment

- The term is unambiguous and needs no embellishment. Understanding the scope and ambit of the behaviour however, requires a recognition that 'coercion' will usually involve a pattern of acts encompassing, for example, assault, intimidation, humiliation and threats. 'Controlling behaviour' really involves a range of acts designed to render an individual subordinate and to corrode their sense of personal autonomy. Key to both behaviours is an appreciation of a 'pattern' or 'a series of acts', the impact of which must be assessed cumulatively and rarely in isolation.

Hayden J

- It takes a skilled practitioner to piece together the evidence required to challenge a confident and self-assured abuser. The judge comments:
- *'As will already be obvious, a great deal of evidence has now been gathered in this case. The nature of the evidence and the breadth of it has presented a considerable challenge to the advocates. It has not been easy to marshal. What is striking, however, is the degree to which the allegations in this case mirror the paradigmatic behaviours identified in the guidance above.'*

Hayden J

- *The overall approach to the assessment of evidence here is the same as in any other case. What requires to be factored into the process is the recognition of the insidious scope and manner of this particular type of domestic abuse. The emphasis in Section 17 of the Serious Crim Act 2015, is on 'repetition' and 'continuous engagement' in patterns of behaviour which are controlling and coercive. Behaviour, it seems to me requires, logically and by definition more than a single act. The wording of FPD 2010 PD12J is potentially misleading in so far as it appears to contemplate establishing behaviour by reference to 'an act or a pattern of acts'.*
- *Key to assessing abuse in the context of coercive control is recognising that the significance of individual acts may only be understood properly within the context of wider behaviour. I emphasise it is the behaviour and not simply the repetition of individual acts which reveals the real objectives of the perpetrator and thus the true nature of the abuse'. (at 109)*

Hayden J

- *'What I have referred to as a particularly insidious type of abuse, may not easily be captured by the more formulaic discipline of a Scott Schedule. As I have commented above, what is really being examined in domestic abuse of this kind is a pattern of behaviour, possibly over many years, in which particular incidents may carry significance which may sometimes be obvious to an observer but to which the victim has become inured.'* (postscript)
- *An intense focus on particular and specified incidents may be a counter productive exercise. It carries the risk of obscuring the serious nature of the harm perpetrated in a pattern of behaviour. ... I consider Scott Schedules to have such severe limitations in this particular sphere as to render them both ineffective and frequently unsuitable. I would go further, and question whether they are a useful tool more generally in factual disputes in Family Law cases. The subtleties of human behaviour are not easily receptive to the confinement and constraint of a Schedule.... Whether a Scott Schedule is appropriate will be a matter for the judge and the advocates in each case unless of course, the Court of Appeal signals a change of approach (postscript).*

What it is NOT

- Cases such as this must be distinguished from those that set out numerous allegations of bad behaviour in relationships (see [L v F \[2017\] EWCv Civ 2121](#)) but that do not meet the threshold to be defined as coercive control and where the court has become the 'battleground for adult conflict'.
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- The court is unlikely to be helped by a lengthy trawl through the parties' relationship and complaints against one another when the behaviour alleged falls short of the type that Mr Justice Hayden has dealt with in these linked cases.

Examples of behaviours

- Isolation from friends and family
- Deprivation of basic needs, such as food
- Monitoring of the partner's time
- Monitoring via online communication tools or spyware (or through access to phone use)
- Taking control over aspects of everyday life, such as where a person can go, who they can see, what they can wear and when they can sleep

Further examples

- Depriving access to support services, such as medical services
- Repeatedly putting the other person down, such as saying you're worthless
- Humiliating, degrading or dehumanising of the other person
- Controlling finances
- Making threats or intimidating the other person.
- Use of sexual dominance/ using sexual intercourse to denigrate

Re H-N and others (Children)
[2021] EWCA Civ 448
<https://www.bailii.org/ew/cases/EWCA/Civ/2021/448.html>
Court of Appeal

- Robustly endorsed Hayden’s judgment and approach
- Notable paragraphs:
- See paras 29 & 30 of that judgment
- Judgment is *of value both because of the illustration that its facts provide of what is meant by coercive and controlling behaviour, but also because of the valuable exercise that the judge has undertaken in highlighting at paragraph 60 the statutory guidance published by the Home Office pursuant to Section 77 (1) of the Serious Crime Act 2015 which identified paradigm behaviours of controlling and coercive behaviour.*

More H-N notable paras Scott Schedules

- Case addressed the utility of Scott schedules
- *46. For our part, we see the force of these criticisms and consider that serious thought is now needed to develop a different way of summarising and organising the matters that are to be tried at a fact-finding hearing so that the case that a respondent has to meet is clearly spelled out, but the process of organisation and summary does not so distort the focus of the court proceedings that the question of whether there has been a pattern of behaviour or a course of abusive conduct is not before the court when it should be. This is an important point. Everyone agrees.*

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H-N

- The CA stated that in the meantime, cases must still be heard and with an increased focus on controlling and coercive behaviour [50]. The approach of regarding controlling and coercive incidents occurring during the parties' relationship as being "in the past", and therefore of little or no relevance in terms of establishing a risk of future harm, should be considered to be "old fashioned" and no longer acceptable [52]
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- *59. Where one or both parents assert that a pattern of coercive and/or controlling behaviour existed, and where a fact-finding hearing is necessary in the context of PD12J, paragraph 16, that assertion should be the primary issue for determination at the fact-finding hearing. Any other, more specific, factual allegations should be selected for trial because of their potential probative relevance to the alleged pattern of behaviour, and not otherwise, unless any particular factual allegation is so serious that it justifies determination irrespective of any alleged pattern of coercive and/or controlling behaviour (a likely example being an allegation of rape).*

Re JK (A Child) (Domestic Abuse: Finding of Fact Hearing) [2021] EWHC 1367 (Fam) Poole J
Case
link: <https://www.bailii.org/ew/cases/EWHC/Fam/2021/1367.html>

- The parties had both filed Scott Schedules setting out their respective allegations against one another. At paragraph 27 Pool J stated that had the case been case managed after the judgment in *Re H-N*, it would have been helpful to have had, in addition to the witness evidence, concise statements on behalf of each party including:
 - *a) a summary of the nature of the relationship;*
 - *b) a list of the forms of domestic abuse that the evidence is said to establish;*
 - *c) a list of key specific incidents said to be probative of a pattern of coercion and/or control; and*
 - *d) a list of any other specific incidents so serious that they justify determination irrespective of any alleged pattern of coercive and/or controlling behaviour.*

The court would have needed to know which specific allegations listed at (d) were admitted or disputed, but there would have been no need to have formal responses to the other sections of the statements.
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GK v PR [2021] EWFC 106

Peel J

Case

link: <https://www.bailii.org/ew/cases/EWFC/H CJ/2021/106.html>

- Appeal against decision of a Recorder – Peel dismissed a number of allegations from a mother
- Peel J referred to the concerns raised in respect of Scott Schedules in *Re H-N* and *Re JK* [21], and at paragraph 22 he echoed the need for a holistic overview to determine fluid and nuanced patterns:
- *22. The risk of applying the Scott Schedule technique is that the judge approaches the case in a formulaic, incident by incident way which detracts from the holistic overview necessary to determine fluid and nuanced patterns. It also runs the risk that incidents which may appear trivial are overlooked and not relied upon. In some cases, a Scott Schedule may be appropriate, for example if the complainant alleges a small number of specific incidents without asserting a pattern of behaviour. But in a case such as this, I am doubtful as to the utility of a Scott Schedule.*

K v K [2022] EWCA Civ 468

Case

link: <https://www.bailii.org/ew/cases/EWCA/Civ/2022/468.html>

- On 8 April 2022 the CA delivered judgment in *K v K*. The CA provided general guidance on the proper approach to finding of fact hearings following the decision in *Re H-N*. The court endorsed the decision in *Re H-N* [1] and made it clear that the CA in *Re H-N* did not impose a requirement for a finding of fact hearing in every case in which domestic abuse is alleged [67]. The judgment emphasises that fact finding is only needed if the alleged abuse is likely to be relevant to what the court is being asked to decide relating to the children's welfare [45].
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- Relevant paras for anyone looking at this case are:
- *65. A fact-finding hearing is not free-standing litigation. It always takes place within proceedings to protect a child from abuse or regarding the child's future welfare. It is not to be allowed to become an opportunity for the parties to air their grievances. Nor is it a chance for parents to seek the court's validation of their perception of what went wrong in their relationship. If fact-finding is to be justified in the first place or continued thereafter, the court must be able to identify how any alleged abusive behaviour is, or may be, relevant to the determination of the issues between the parties as to the future arrangements for the children.*

K v K continued

- *66. At the risk of repeating what has been said at [37] in Re H-N and at [41] above, the main things that the court should consider in deciding whether to order a fact-finding hearing are: (a) the nature of the allegations and the extent to which those allegations are likely to be relevant to the making of the child arrangements order, (b) that the purpose of fact-finding is to allow assessment of the risk to the child and the impact of any abuse on the child, (c) whether fact-finding is necessary or whether other evidence suffices, and (d) whether fact-finding is proportionate.*

67. It seems that a misunderstanding of the court's role has developed. There is a perception that the Court of Appeal has somehow made it a requirement that in every case, in which allegations of domestic abuse are made, it is incumbent upon the court to undertake fact-finding, involving a detailed analysis of each specific allegation made. That is not the case. As Re H-N explained and we reiterate here, the duty on the court is limited to determining only those factual matters which are likely to be relevant to deciding whether to make a child arrangements order and, if so, in what terms.

Summary

- Important to reflect the overall nature of the marriage in statement form.
- Examples illustrate this and give an overview of the behaviour.
- There will need to be a range of behaviours and likely to be not just one 'aspect' of the abuse.
- Skilled and careful statements must be drafted – often supported by emails and WhatsApps/ messages.
- The apparently mundane may not be within an abusive situation.