



Court of Protection Seminar: Coercive Control

Wednesday, 8th November 2023
Doughty Street Chambers

WiFi: DSC - Guest

Password: CHAMB3RS@DSC

CHAIR

Oliver Lewis, Doughty Street Chambers

SPEAKERS

Professor Rod Dubrow-Marshall, University of Salford

Gemma Daly, Doughty Street Chambers

Nancy Williams, Doughty Street Chambers

Zoe Harper, Doughty Street Chambers



Professor Rod Dubrow-Marshall, University of Salford



Controlling and Coercive Behaviour (SCA, 2015)

Controlling behaviour: “A range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.”

Coercive behaviour: “A continuing 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.”

UK Serious Crime Act 2015 Section 76

Controlling or coercive behaviour does not relate to a single incident – a pattern and various types:

- Isolating a person and/or deprivation of needs
- Monitoring their time and communications
- Taking control over aspects of their everyday life
- Depriving them of access to services
- Repeatedly putting them down – humiliation
- Threats including to hurt and kill or to a child
- Financial or economic abuse
- Assault (including sexual assault) and rape
- Elder or Adult Abuse
- Vulnerability factors – e.g. disability, age

Instruments for CCB and Trauma-Coerced Attachment

Coercive Control Scale Individual – 12 (CCSI-12)

(Roderick Dubrow-Marshall, Linda Dubrow-Marshall, Kate Amber & Jill Aebi-Mytton, 2022)

Thinking about the partner you identified at the start of this survey, please respond to the following:

1. My involvement with this person isolated me.
Strongly Agree 9 = 8 - 7 - 6 - 5 - 4 - 3 - 2 - 1 Strongly disagree
2. My activity over time was monitored on a continuous basis while with this person
Strongly Agree 9 = 8 - 7 - 6 - 5 - 4 - 3 - 2 - 1 Strongly disagree
3. I didn't have access to external services (ex. medical) while I was with this person
Strongly Agree 9 = 8 - 7 - 6 - 5 - 4 - 3 - 2 - 1 Strongly disagree
4. I didn't have access to basic needs (ex. food, money, sleep, shelter etc.) while with this person
Strongly Agree 9 = 8 - 7 - 6 - 5 - 4 - 3 - 2 - 1 Strongly disagree
5. I was frequently made to feel worthless by this person
Strongly Agree 9 = 8 - 7 - 6 - 5 - 4 - 3 - 2 - 1 Strongly disagree
6. I was routinely put down by this person
Strongly Agree 9 = 8 - 7 - 6 - 5 - 4 - 3 - 2 - 1 Strongly disagree
7. I was regularly humiliated by this person
Strongly Agree 9 = 8 - 7 - 6 - 5 - 4 - 3 - 2 - 1 Strongly disagree
8. My finances were exploited by the person and continually used to support them
Strongly Agree 9 = 8 - 7 - 6 - 5 - 4 - 3 - 2 - 1 Strongly disagree
9. This person's behaviour was often characterized by manipulation and deception.
Strongly Agree 9 = 8 - 7 - 6 - 5 - 4 - 3 - 2 - 1 Strongly disagree
10. The person made me feel like I was crazy.
Strongly Agree 9 = 8 - 7 - 6 - 5 - 4 - 3 - 2 - 1 Strongly disagree
11. I felt that I, or my loved ones, were under threat if I did not co-operate with or if I left the person I was with
Strongly Agree 9 = 8 - 7 - 6 - 5 - 4 - 3 - 2 - 1 Strongly disagree
12. Expectations and consequences were applied unequally to myself and my partner
Strongly Agree 9 = 8 - 7 - 6 - 5 - 4 - 3 - 2 - 1 Strongly disagree

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Trauma Coerced Attachment Screen 11 – Individual (TCASI-11)

(Roderick Dubrow-Marshall, Linda Dubrow-Marshall & Jill Aebi-Mytton, 2022)

Thinking about your ex-partner (on a scale from 9 - 1 below) please respond to each item about how you felt at the time, prior to recognizing that something wasn't quite right.

1. My partner was the most important thing in my life when I was with them
Strongly Agree 9 = 8 - 7 - 6 - 5 - 4 - 3 - 2 - 1 Strongly disagree
2. When I did things for my partner I did this out of devotion and a strongly held belief that I was on the right path with them
Strongly Agree 9 = 8 - 7 - 6 - 5 - 4 - 3 - 2 - 1 Strongly disagree
3. Doing things for my partner made me feel better about myself and my future
Strongly Agree 9 = 8 - 7 - 6 - 5 - 4 - 3 - 2 - 1 Strongly disagree
4. I felt that my partner had all the right answers and ideas about the world
Strongly Agree 9 = 8 - 7 - 6 - 5 - 4 - 3 - 2 - 1 Strongly disagree
5. If someone criticised my partner I would feel hurt and would really want to defend them
Strongly Agree 9 = 8 - 7 - 6 - 5 - 4 - 3 - 2 - 1 Strongly disagree
6. I felt such love and respect for my partner that I would do almost anything for them
Strongly Agree 9 = 8 - 7 - 6 - 5 - 4 - 3 - 2 - 1 Strongly disagree
7. I felt obliged to keep secrets for my partner.
Strongly Agree 9 = 8 - 7 - 6 - 5 - 4 - 3 - 2 - 1 Strongly disagree
8. I overlooked hurtful and destructive behaviours by my partner because of my overall belief in them.
Strongly Agree 9 = 8 - 7 - 6 - 5 - 4 - 3 - 2 - 1 Strongly disagree
9. I stayed with my partner despite feeling fearful of them.
Strongly Agree 9 = 8 - 7 - 6 - 5 - 4 - 3 - 2 - 1 Strongly disagree
10. I acted against my own values under pressure from my partner
Strongly Agree 9 = 8 - 7 - 6 - 5 - 4 - 3 - 2 - 1 Strongly disagree
11. I thought about pleasing and gaining approval from my partner
Strongly Agree 9 = 8 - 7 - 6 - 5 - 4 - 3 - 2 - 1 Strongly disagree

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Email: r.dubrow-marshall@salford.ac.uk

Trauma bonds or ‘trauma-coerced attachment’

“Trauma-coerced attachment (TCA)—often referred to as trauma bonding— has been noted and documented across various abusive contexts. TCA involves a powerful emotional dependency on the abusive partner and a shift in world- and self- view, which can result in feelings of gratitude or loyalty toward the abuser and denial or minimization of the coercion and abuse.

Key features:

1. Grandiose ideation about the abuser, including:
 - a. The belief that the abuser is omnipotent
 - b. The idealization of his/her qualities
 - c. And the idea that the relationship is sacred

2. Positive feelings such as love, gratitude, respect, or loyalty toward the abuser, despite violent or abusive relationship dynamics
 - a. Threats to the relationship can result in protecting or defending the abuser, despite negative outcomes for the victim”

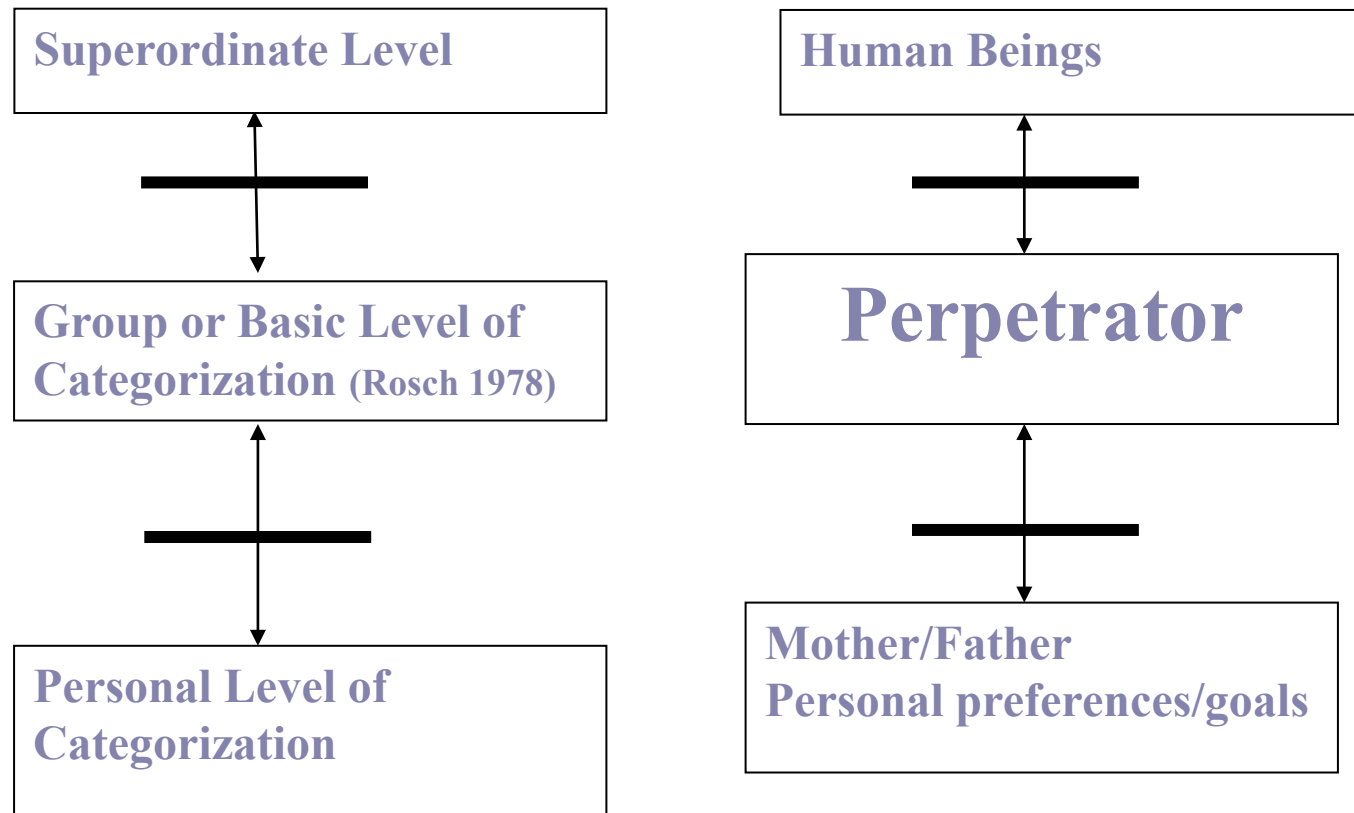
Doychak & Raghaven (2018, 2020)

Abnormal and harmful cognitive functioning

Totalistic Identity Theory – involving trauma coerced attachment

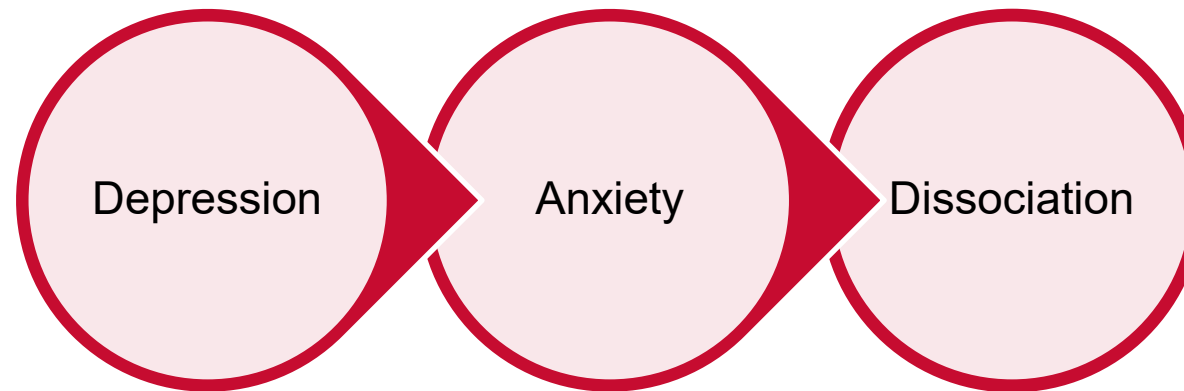
An unhealthily dominant group identity – norms and behaviour are self-referential and self-defining (Dubrow-Marshall, 2010)

A cognitive existential need is filled and/or created or increased



Complex PTSD (or PTSD+) in ICD-11

Post-traumatic stress disorder (PTSD)



- Re-experiencing (intrusive flashbacks, dreams etc.)
- Avoidance (which negatively affects life)
- Hyper-arousal (startling, lack of sleep etc)

Complex PTSD –ICD 11- PTSD +

Symptoms:

- Difficulty controlling your emotions
- Feeling very hostile or distrustful towards the world
- Constant feelings of emptiness or hopelessness
- Feeling as if you are permanently damaged or worthless
- Feeling as if you are completely different to other people
- Feeling like nobody can understand what happened to you
- Avoiding friendships and relationships, or finding them very difficult
- Often experiencing dissociative symptoms such as depersonalisation or derealisation
- Regular suicidal feelings.

DSM V-TR

Other Specified Dissociative Disorder

Diagnostic Criteria – Code 300.15

2. Identity disturbance due to prolonged and intense coercive persuasion: Individuals who have been subjected to intense coercive persuasion (e.g., brainwashing, thought reform, indoctrination while captive, torture, long-term political imprisonment, recruitment by sects/cults or by terror organizations) may present with prolonged changes in, or conscious questions of, their identity.

Recovery and Disengagement/exit

Exit / Disengagement



Recovery/Rehabilitation



- Parallel processes of disengagement (leaving the abuser) and recovery and rehabilitation
- Deidentification with the abuser can be ongoing
- Harm reduction
- Use of Motivational Interviewing to build on ambivalence and dissonance
- Contact needs to be carefully assessed

In 2017 we created the unique Masters programme on the Psychology of Coercive Control at the University of Salford...now fully online (since September 2020)



MSc/PgDip/PgCert Psychology of Coercive Control

Course summary

This course will provide you with a detailed understanding of the psychology of coercive control and behaviour. This is an increasingly important area of concern and work across a variety of professional settings particularly in light of the Serious Crime Act (2015) which defined controlling or coercive behaviour and the upcoming Domestic Violence and Abuse bill.

You'll find the course particularly relevant if you are working in professions and organisations that focus on supporting survivors of domestic abuse, trafficking or gangs, and those who support refugees or others who have survived coercive environments. The course will also equip you to go into such work or to progress to specialist professional training or programmes in counselling psychology or psychotherapy that will allow you to apply and use your skills and knowledge of coercive control.

In brief

- You will gain an advanced knowledge and understanding of coercive control and behaviour relevant to a range of roles and environments
- You will be able to focus on your own interests or professional area of expertise for the dissertation
- The course emphasis is on the application of knowledge and skills in professional settings and you will have the opportunity to do this in a supported placement
- Part-time study is available and is particularly relevant to people working already in professional settings with survivors of coercive control or domestic abuse

Location: Frederick Road Campus

Duration: One year full-time or three years part-time (MSc), eight months full-time or two year part-time (PGDip), four months full-time or nine months part-time (PGCert).

Start date: September

Entry requirements: Upper second class honours degree in psychology or other health/social care related discipline, e.g. counselling, health sciences, nursing or degrees in other relevant areas including criminal justice, law, police science. We welcome applications from students who may not have formal/traditional entry criteria but who have relevant experience of the ability to pursue the course successfully.

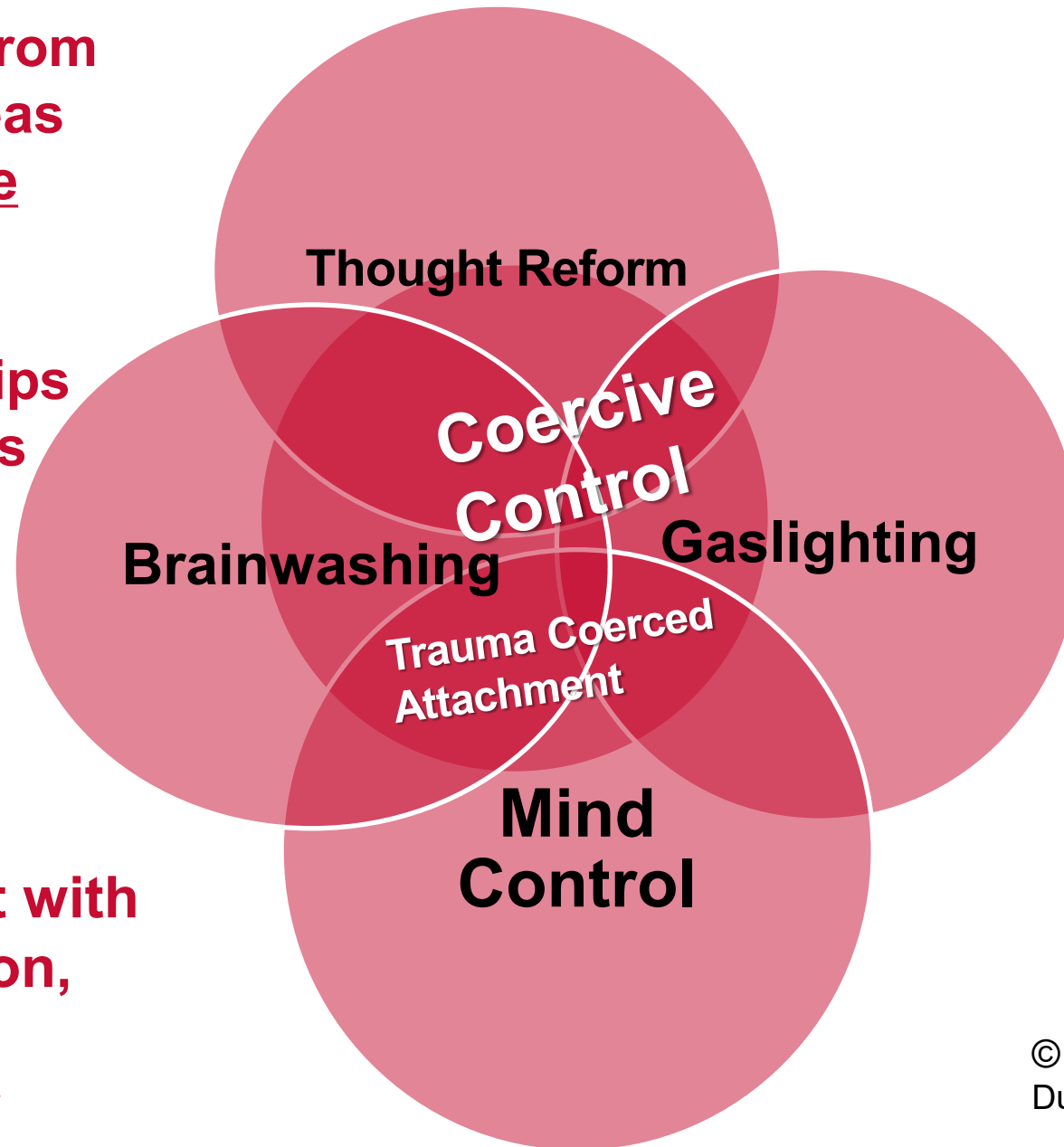
Assessment: Essays, presentation, placement report, research proposal, dissertation.

Delivery: Lectures, tutorials, seminars, discussion groups, guest lectures, placement, virtual learning, workshops.

Full details: www.salford.ac.uk/psychology-of-coercive-control

The only Masters program anywhere in the world which examines how Coercive Control works across relationships, extremist groups or cults, radicalisation, trafficking and gangs – with a practical focus on prevention, exit and rehabilitation work – our students and graduates already work or go onto work in these fields!

**Learning from
across areas
of coercive
control in
domestic
relationships
and groups**

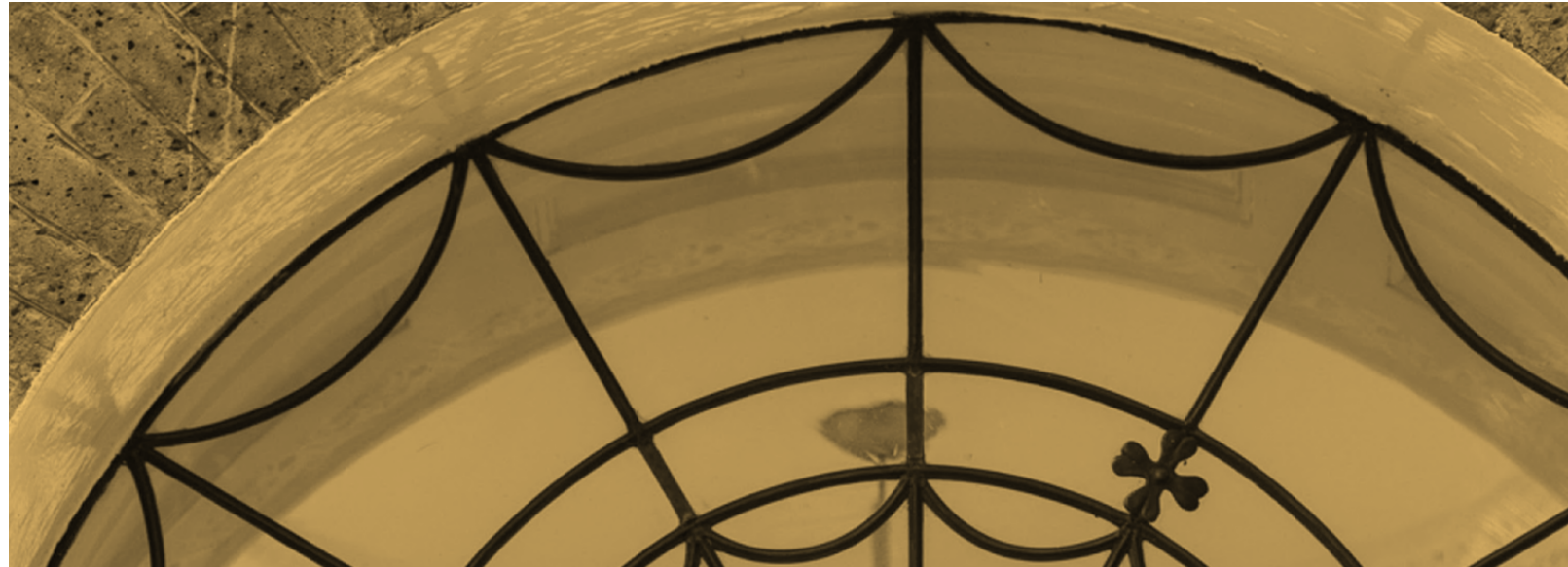


**To assist with
prevention,
exit and
recovery**

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Court of Protection Seminar: Coercive Control

8 November 2023



COERCIVE CONTROL IN THE COP

A County Council v LW & An NHS Social Care Partnership Trust [2020] EWCOP 50

Hayden J

“18. This judgment provides a timely opportunity to highlight both the insidious nature of controlling and coercive behaviour and the extreme vulnerability of those lacking mental capacity in facets of their decision making...”

“21. I reiterate that it is understanding the cumulative impact of this behaviour that is crucial to effective safeguarding.”

GUIDANCE REFERENCED IN LW

“Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members, regardless of gender or sexuality. This can encompass, but is not limited to, the following types of abuse: psychological, physical, sexual, financial and emotional.” (para 19)

“Coercive behaviour is an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.

Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.” (para 20)

CPS GUIDANCE, 24 APRIL 2023

- isolating a person from their friends and family
- depriving them of their basic needs
- monitoring their time
- monitoring a person via online communication tools or using spyware
- using digital systems such as smart devices or social media to coerce, control, or upset the victim including posting triggering material
- taking control over aspects of their everyday life, such as where they can go, who they can see, what to wear and when they can sleep – this can be intertwined with the suspect saying it is in their best interests, and ‘rewarding’ ‘good behaviour’ e.g. with gifts
- depriving them of access to support services, such as specialist support or medical services
- repeatedly putting them down such as telling them they are worthless
- enforcing rules and activity which humiliate, degrade or dehumanise the victim
- forcing the victim to take part in criminal activity such as shoplifting, neglect or abuse of children to encourage self-blame and prevent disclosure to authorities
- economic abuse including coerced debt, controlling spending/bank accounts/investments/mortgages/benefit payments
- controlling the ability to go to school or place of study
- taking wages, benefits or allowances
- threatening to hurt or kill
- threatening to harm a child
- threatening to reveal or publish private information

CPS GUIDANCE, 24 APRIL 2023 (2)

- threatening to hurt or physically harming a family pet
- assault
- physical intimidation e.g. blocking doors, clenching or shaking fists
- criminal damage (such as destruction of household goods)
- preventing a person from having access to transport or from working
- preventing a person from learning or using a language or making friends outside of their ethnic or cultural background
- family 'dishonour'
- reputational damage
- sexual assault or threats of sexual assault
- reproductive coercion, including restricting a victim's access to birth control, refusing to use a birth control method, forced pregnancy, forcing a victim to get an abortion, to undergo in vitro fertilisation (IVF) or other procedure, or denying access to such a procedure
- using substances such as alcohol or drugs to control a victim through dependency, or controlling their access to substances
- disclosure of sexual orientation
- disclosure of HIV status or other medical condition without consent
- limiting access to family, friends and finances
- withholding and/or destruction of the victim's immigration documents, e.g. passports and visas
- threatening to place the victim in an institution against the victim's will, e.g. care home, supported living facility, mental health facility, etc (particularly for disabled or elderly victims)

FACTUAL SCENARIOS IN THE COP

A County Council v LW & An NHS Social Care Partnership Trust [2020] EWCOP 50

- 60yo woman, variety of MH diagnoses
- “long term partner” MG – relationship abusive, exploitative, coercive and wholly inimical to LW’s welfare
- MG lived in LW’s home for 18 months before LW admitted to hospital “emaciated” + personal hygiene v neglected. MG had restricted her food intake – salad + 1 potato/day
- MG controlled LW “with his own distorted perceptions on religion” e.g. making her say prayers at extraordinary length often daily
- MG made LW smash her own piano, forbid her wearing underwear, compromised her dignity
- MG alienated LW from her family and other support, leading to her becoming ever more dependent on him - “paradigm of domestic abuse”

WU V BU & NC & A COUNCIL [2021] EWCOP 54 – ROBERTS J

- BU = 70yo woman with vascular dementia
- Relationship with NC – “central and crucially important part of her life and, as she sees it, pivotal to her emotional wellbeing and happiness”
- NC saw it as romantic but platonic with plans for civil partnership
- “coercive control exerted by him in several aspects of her day-to-day life and in particular in relation to the management of her financial affairs”
- Estranged from family
- NC presented himself as victim of wider family’s hostility and prejudice, accused family of control
- BU had significant financial resources – some unaccounted for, others used by NC to acquire boat, caravan, pick-up truck and van as part of his business + received approx. £80,000 from BU.
- NC controlled food intake in response to suggestion of pre-diabetes
- NC took on central role for medical appointments + acted as conduit for release of info to family
- NC’s control over BU increased after moving into her home
- NC later told court they agreed codicil to will where he would receive direct financial benefit
- BU refused to believe NC’s past offences when informed by the social worker, police, + daughter

WU V BU & NC & A COUNCIL [2021] EWCOP 54 – ROBERTS J (2)

- *“...From the very outset, their relationship was characterised by financial motive. One of the first conversations they had involved a request by NC for a loan to assist in meeting his rent on the gallery premises he was then renting. Through a series of apparently inconsequential actions after that meeting, NC assumed a degree of incremental control over BU’s affairs which was wholly inappropriate and which I find to have gone far beyond the actions of a friend who was trying to assist or offer kind support. He had access to her mobile phone and text messages which he read and to which he would often respond on her behalf. He sought to put distance between BU and her family including during periods when she was plainly unwell. He sought to intervene in the professional arrangements which she had with her accountants. He became pivotal in the discussions regarding the new arrangements for her Will...” (para 91)*

MB V PB & OTHERS [2022] EWCOP 14

- PB = 65yo woman suffered brain haemorrhage causing lasting injury in 2018 – impaired cognitive function + physical impairments
- Specialist care home since 2019 hospital discharge
- Married to MB for over 40 years – MB sought PB's return home, or unrestricted contact
- Safeguarding concerns raised re MB's conduct towards PB and approach to medical professionals
- Care home served notice due to MB's *“overbearing treatment of the care home staff and the consequent interference with its ability to provide appropriate care for P and the other residents of the home”*
- Before ABI: MB monitoring P whenever she was outside the home and socially isolating her from friends and her sister. Sister stated that PB had said would leave him but lost her nerve.
- After ABI: only MB knew what was best for P and unwilling to accept advice, sought out junior/inexperienced staff to get them to do what he wanted for P's care or complain/intimidate, and insisted only he could understand P and her wishes. MB turned up at care home with solicitor to obtain P's signature for LPA despite being told she lacked capacity.

MB V PB & OTHERS [2022] EWCOP 14 (2)

- Facts found:
 - i. Pattern of controlling and coercive behaviour before P's admission into full-time care
 - ii. Pattern of controlling and coercive behaviour that continued after her admission into full-time care
 - iii. MB has a controlling and overbearing attitude towards the care staff
 - iv. MB has sought to interfere in the provision of care by his refusal to accept what professionals tell him and his insistence that he knows best about what care P should be receiving
 - v. MB has sought to limit and control the contact that P has had with other members of the family particularly her children and her sister
 - vi. At times P has found contact with MB to be upsetting and unwelcome. Equally at other times she has derived pleasure from it.

CONTROL AND CAPACITY

- *PB* – parties agreed that *PB* lacked capacity to make decisions about her residence and care, contact, and conduct those proceedings
- *LW* – parties agreed and court declared that *LW* lacked capacity to make decisions relating to contact with *MG*, where she should live and the nature/extent of care she requires

*“It is the influence that *MG* asserts over *LW*’s fragile personality that compromises her capacity to weigh and evaluate the questions relating to her care and where she should live. This is compounded by her inability to understand her own mental health needs...” (para 13)*

CONTROL AND CAPACITY (2)

- BU – NC challenged capacity evidence
- 3 expert reports – ISW, consultant psychiatrist, consultant psychologist
- Roberts J:

“In my judgment the expert and other evidence in this case supports overwhelmingly the conclusion that BU currently lacks capacity to decide whether to maintain contact with NC... Because of the corrosive and coercive nature of the control which I find NC to have exercised over her, BU has been deprived of autonomous decision-making in this context. Put simply, she no longer has the ability to exercise her individual free will in the context of any ongoing relationship with NC. The degenerative vascular changes in her brain have resulted in a global cognitive impairment which has impacted upon her ability to weigh and use the information to the extent that a person with full capacity could. I am not persuaded that she truly understands the nature of their relationship or what a future with NC would hold in terms of an ongoing relationship...” (para 89)

BU: CAPACITY

- *“Even when presented with clear and overwhelming evidence of NC’s antecedent history and his willingness to coerce, intimidate and blackmail others for his own personal benefit and financial gain, she has been quite unable to weigh and balance those factors in her decision-making. She is blind to future risk as she has been to past risk. She has found herself caught up in the excitement of sharing in NC’s own future plans for property investment (for such I find them to be) without any understanding of the financial risks to which she might be exposed as a result of her financial involvement...” (para 90)*
- *NC found “to have engaged on a deliberate and calculated attempt to subvert any independent decision-making on BU’s part...” (para 91)*

INHERENT JURISDICTION FOR VULNERABLE ADULTS

Re SA [2005] EWHC 2942 (Fam), (then) Munby J

“77. It would be unwise, and indeed inappropriate, for me even to attempt to define who might fall into this group in relation to whom the court can properly exercise its inherent jurisdiction. I disavow any such intention. It suffices for present purposes to say that, in my judgment, the authorities to which I have referred demonstrate that the inherent jurisdiction can be exercised in relation to a vulnerable adult who, even if not incapacitated by mental disorder or mental illness, is, or is reasonably believed to be, either (i) under constraint or (ii) subject to coercion or undue influence or (iii) for some other reason deprived of the capacity to make the relevant decision, or disabled from making a free choice, or incapacitated or disabled from giving or expressing a real and genuine consent.”

RE SA

ii) Coercion or undue influence: What I have in mind here are the kind of vitiating circumstances referred to by the Court of Appeal in *In re T (Adult: Refusal of Treatment)* [1993] Fam 95, where a vulnerable adult's capacity or will to decide has been sapped and overborne by the improper influence of another. In this connection I would only add, with reference to the observations of Sir James Hannen P in *Wingrove v Wingrove* (1885) 11 PD81, of the Court of Appeal in *In re T (Adult: Refusal of Treatment)* [1993] Fam 95, and of Hedley J in *In re Z (Local Authority: Duty)* [2004] EWHC 2817 (Fam), [2005] 1 WLR 959, that **where the influence is that of a parent or other close and dominating relative, and where the arguments and persuasion are based upon personal affection or duty, religious beliefs, powerful social or cultural conventions, or asserted social, familial or domestic obligations, the influence may, as Butler-Sloss LJ put it, be subtle, insidious, pervasive and powerful. In such cases, moreover, very little pressure may suffice to bring about the desired result.**

RE DL [2012] EWCA CIV 253

LJ McFarlane:

"...targeted solely at those adults whose ability to make decisions for themselves has been compromised by matters other than those covered by the MCA 2005..."

The jurisdiction... is in part aimed at enhancing or liberating the autonomy of a vulnerable adult whose autonomy has been compromised by a reason other than mental incapacity because they are [under constraint, subject to coercion or undue influence, or for some other reason incapacitated or disabled from giving or expressing real and genuine consent]" (para 54)

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Court of Protection Seminar: Coercive Control



Coercive and Controlling Behaviour in the Family Court - Lessons for the Court of Protection
Nancy Williams, Barrister



I. WHAT IS CONTROLLING AND COERCIVE BEHAVIOUR

Paragraph 3 of PD 12J – Child Arrangements and Contact Orders: Domestic Abuse and Harm FPR 2010.

Features of controlling and coercive behaviour:

‘coercive behaviour’ = act or a pattern of acts of assault, threats, humiliation or other abuse used to harm, punish, or frighten the victim;

‘controlling behaviour’ = an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from others and exploiting their resources and capacities for personal gain

II. APPROACH IN THE FAMILY COURT – SCOTT SCHEDULE

Date	Respondent's allegation	Applicant's response	Judge's finding
05/06/2018	<p>1. Applicant pushed Respondent down the stairs after an argument.</p> <p>Reference:</p> <p>Police report dated 06/06/2018. Bundle F2.</p> <p>GP letter dated 07/06/2018. Bundle F3.</p>	<p>Allegation denied.</p> <p>Respondent fell down the stairs of her own accord after assaulting applicant.</p>	

III. APPROACH IN THE FAMILY COURT – SCOTT SCHEDULE

Re H-N

- Unanimous criticism of the use of Scott Schedules by the parties and the interveners
- The CoA endorsed those criticisms

The CoA indicated that it may be appropriate for the court to consider a specific, factual allegation where:

- it has potential probative relevance to the alleged pattern of behaviour; and
- the allegation is so serious that it justifies consideration as a separate standalone allegation, for example rape [[Re H-N](#), 59]
- Approach confirmed in [K v K 2022 EWCA Civ 468](#)

IV. APPROACH IN THE FAMILY COURT – SCOTT SCHEDULE ?

What is the alternative to Scott Schedule?

- Threshold Document
- Formal pleadings similar to a particular of claim in civil proceedings
- Narrative statement

[Ref **Re H-N**, 48]

- Clusters of each form of alleged domestic abuse.
- Guidance for Judges and Magistrates dealing with fact finding hearings and domestic abuse in Private Law Children Proceedings, 5 May 2022.

V. LESSONS FROM PRIVATE CHILDREN PROCEEDINGS

- **Identify** early in the proceedings whether P is subject to controlling and coercive behaviour
 - Definitions – FPR 2010, **Re H-N**
 - Cafcass (tool for assessing coercive control) the DASH checklist, the Domestic Abuse Act 2021 statutory guidance and the Controlling or Coercive Behaviour Statutory Guidance Framework
- **Presentation** of the allegations of controlling and coercive behaviour
 - Scott schedule?
 - Or threshold, clusters, narrative statement
- **Relevance** - Draw a causal link between the allegations and the decisions/orders that you are asking the court to make

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Court of Protection Seminar: Coercive Control



Coercive control: Best Interests decisions
Zoe Harper, Barrister, Doughty Street Chambers

PROTECTING VULNERABLE ADULTS

- Approach is likely to be fact specific.
- May be sufficient 'reason to believe' lacks capacity for Court of Protection jurisdiction under s.48 Mental Capacity Act 2005
 - Assessment of capacity may require fact-finding to take place first
- Inherent Jurisdiction
 - High Court may exercise inherent jurisdiction in relation to vulnerable adults: *SA (Vulnerable Adult with Capacity: Marriage)* [2006] 1 FLR 867
 - Applies for the protection of adults notwithstanding implementation of MCA 2005: *A Local Authority v DL* [2012] 3 All ER 1064;
 - A primary purpose of inherent jurisdiction to allow the individual to be able to regain their autonomy of decision-making: *LB Croydon v KR & Anor* [2019] EWHC 2498 (Fam)
- Bringing proceedings under inherent jurisdiction AND Mental Capacity Act 2005
 - e.g. *Leicester City Council v MPZ* [2019] EWCOP 64
- Consider orders / injunctions against person believed to be controlling the individual

CONTROLLING OR COERCIVE BEHAVIOUR IN AN INTIMATE OR FAMILY RELATIONSHIP

- Section 76 Serious Crime Act 2015
 - Statutory framework: <https://www.gov.uk/government/publications/controlling-or-coercive-behaviour-statutory-guidance-framework>
 - CPS guidance: <https://www.cps.gov.uk/legal-guidance/controlling-or-coercive-behaviour-intimate-or-family-relationship>
- An offence is committed by a suspect ('A') against a victim ('B') if:
 - A repeatedly or continuously engages in behaviour towards another person, B, that is controlling or coercive
 - At the time of the behaviour, A and B are personally connected
 - The behaviour has a serious effect on B, and
 - A knows or ought to know that the behaviour will have a serious effect on B
- Examples of relevant behaviour that may accumulate include eg isolating from family and friends, depriving of basic needs, depriving of access to support services, disclosing medical condition without consent, economic abuse, controlling aspects of daily life eg what to wear, when can sleep saying it is in their best interests

DOMESTIC VIOLENCE PROTECTION NOTICES AND ORDERS

- Sections 24-33 Crime and Security Act 2010
 - DVPN immediate measure where police reasonably believe that a person (over 18) has been violent or threatened violence against an associated person and that person needs to be protected from harm
 - *'Associated person'* defined s.62 Family Law Act 1996, including current/former spouses, civil partners, cohabitants, relatives, intimate relationship of significant duration, live in same household other than as tenant, lodger etc.
 - DVPN triggers application for DVPO, considered within 48 hours by Magistrates Ct
 - DVPO lasts minimum 14 days to maximum 28 days placing conditions on the perpetrator, including requiring P to leave the home
 - Breach of DVPO considered contempt of court, with penalty of up to 2 months imprisonment or fine
 - Agreement from the victim not needed to issue a DVPN though their views must be considered
 - Aim is to give the victim breathing space to consider their options with support

SEXUAL RISK ORDERS

- Section 122A Sexual Offences Act 2003
- Application to Magistrates Court by Chief Officer of Police where:
 - Person has carried out an 'act of a sexual nature' and as a result there is reasonable cause to believe that it is for the order to be made to protect the public or particular members from harm.
 - 'Acts of sexual nature' not defined and may be considered broadly
- Determined on the balance of probabilities
- May be sought even where individual not convicted or cautioned of a sexual offence.
- Order made for min 2 years, specifies time periods for different prohibitions
- Interim order may be made during the determination of an application for full order
- May prohibit any action considered proportionate and necessary to protect eg prohibiting contact
- Breach is criminal offence with power of arrest, max 5 years imprisonment and notification requirements for registered sex offenders



Court of Protection Seminar: Coercive Control

Wednesday, 8th November 2023
Doughty Street Chambers

WiFi: DSC - Guest

Password: CHAMB3RS@DSC