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Identifying and understanding patterns of coercive and controlling behaviour - “That which might, in isolation, appear innocuous or insignificant may in the context of a wider evidential picture be more accurately understood”

Jodie Cudworth & Ayisha Robertson

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Ayisha Robertson and Jodie Cudworth discuss the recent decision of Mr Justice Hayden in **F v M [2021] EWFC 4** in which the High Court analyses controlling and coercive behaviour. They consider the available definitions & guidance and the implications of this Judgment on how evidence is particularised for the purpose of fact-finding hearings - Does this mark the end of Scott schedules?

Introduction

F v M is one of the first reported cases in the High Court to consider coercive and controlling behaviour (CCB) as a form of domestic abuse. It provides a useful summary of the current definitions and guidance on coercive and controlling behaviour and should be read in full by all professionals working within the family justice system. The full judgment can be accessed via: <https://www.bailii.org/ew/cases/EWFC/HCI/2021/4.html>

The case concerned two families in which allegations of coercive and controlling behaviour had been made against the same Applicant Father and the evidence of Fs conduct within the non-subject family as evidence of propensity to conduct himself in the manner alleged within the subject proceedings. It demonstrates the insidious nature of CCB and just how hard it can be to identify, evidence and prove this form of abuse.

It highlights how it may be especially difficult for victims of CCB to identify their experience as abusive and why it is therefore important for professionals working with families to be able to identify this form of abuse and the risk to justice of taking examples of CCB in isolation and/or being reduced to a few allegations.

F v M predated the recent quartet of appeals in the CoA concerning allegations of domestic abuse in the context of private law children applications. The Judgment is expected in the coming weeks, but the CoA expressly approved the Judgment of Mr Justice Hayden and it is anticipated that the President will give further guidance on the approach to be taken when allegations of domestic abuse are made in the context of private law children applications.

Coercive and Controlling behaviour

What is coercive and controlling behaviour? ‘This particular form of domestic abuse ‘requires an evaluation of a *pattern of behaviour* in which the significance of isolated incidents can only be understood in the **context of a much wider picture**’ (para 60).

Coercive and Controlling behaviour is defined in the Family Procedure Rules PD12J as:

“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;”
(para 103)

In the criminal context, s.76 of the Serious Crime Act 2015 creates an offence of controlling and coercive behaviour in which an offence is committed if:

s.76 (1)

- (a) (A) **repeatedly** or **continuously** engages in behaviours towards another person
- (B) that is controlling and coercive,
- (b) at the time of the behaviour, A and B are personally connected,
- (c) the behaviour has a serious effect on B, and
- (d) A knows or ought to know that the behaviour will have a serious effect on B.

Behaviour has a serious effect on B if:

s.76(4)

- (a) it causes B to fear on at least two occasions, that violence will be used against B;
- (b) it causes B serious alarm or distress which has a substantial adverse effect on B’s day to day activities (Para 105).

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Mr Justice Hayden highlights that within the criminal context the legislation emphasises the **‘repeated and/or continuous nature** of this abuse’ (para 106).

In **A County Council v LW & Anor** [\[2020\] EWCOP 50](#) Hayden J considered the Home Office guidance pursuant to s.77 of the Serious Crime Act 2015 and identified a list of ‘paradigm behaviours’ – Note this list is non exhaustive:

- Isolating a person from their friends and family
- Depriving them of their basic needs
- Monitoring their time
- Monitoring a person via online communication tools or using spyware
- Taking control over aspects of their everyday life, such as where they can go, who they can see, what to wear and when they can sleep
- Depriving them access to support services, such as specialist support or medical services
- Repeatedly putting them down such as telling them they are worthless
- Enforcing rules and activity which humiliate, degrade or dehumanise the victim
- Forcing the victim to take part in criminal activity such as shoplifting, neglect or abuse of children to encourage self-blame and prevent disclosure to authorities
- Financial abuse including control of finances, such as only allowing a person a punitive allowance
- Control ability to go to school or place of study
- Taking wages, benefits or allowances
- Threats to hurt or kill
- Threats to harm a child
- Threats to reveal or publish private information (e.g. threatening to 'out' someone)
- Threats to hurt or physically harming a family pet
- Assault
- Criminal damage (such as destruction of household goods)
- Preventing a person from having access to transport or from working
- Preventing a person from being able to attend school, college or University
- Family 'dishonour'

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- Reputational damage
- Disclosure of sexual orientation
- Disclosure of HIV status or other medical condition without consent
- Limiting access to family, friends and finance.

In considering the approach to be taken when evaluating evidence, Hayden J reaffirmed the general approach that *'the court must evaluate the strands of evidence in the context of the evidence as a whole...that evidence which may not be significant, in isolation, may gain greater relevance when placed in the context of the wider evidential canvas'* (para 108).

One striking example that brings the need to evaluate evidence as a whole, into sharp focus is the following excerpt from the ABE interview of the first relationship:

"M: Umm around February time I was still with him. My friends really didn't want me to be with him. I think it was about the 14th valentine day I found out I was pregnant. AC: OK.

M: And I was not happy about that. He made take a. He made me go to the doctors and I really didn't want to go because in a woman cycle. I don't really want to explain that but umm. During that point I was meant to start, and I didn't. And he made me go to the doctors and I said look wait, because I know my body and I know what is going to happen. Just give it a few days. And he made me go to the doctors. Take a pregnancy test and the doctors told me I was pregnant. And I just cried

AC: Right.

M: I really didn't want to be pregnant at that age.

AC: You were eighteen at that point? And what? How did he take it?

M: He just smiled.

AC: OK.

M: And then as soon as we left the doctor's he made me call my parents and I didn't want to tell my mum that I was pregnant. I really didn't. But he took the phone out of my hand and dialled my mum. And I had to tell. He made me basically. Well forced me to tell my mum that I was pregnant." (my emphasis) (para 48)

Mr Justice Hayden considered that this passage *'illustrates how something that may appear relatively innocuous or natural such as a telephone call made to a mother by a daughter who had just discovered she is pregnant is, in context, a brutal act of mental and emotional*

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cruelty to both the women concerned. Forcing M to telephone her mother before she had even a moment to absorb the news herself was intended to cause pain and it did so' (para 49).

Scott Schedules

Whilst Hayden J declined to offer new guidance, no doubt mindful of the appeals which were about to follow but did proffer the following:

“ I can also see that 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. ... An intense focus on particular and specified incidents may be a counterproductive exercise. It carries the risk of obscuring the serious nature of harm perpetrated in a pattern of behaviour. This was the issue highlighted in the final report of the expert panel to the Ministry of Justice: ‘Assessing Risk of Harm to Children and Parents in Private Law Children Cases’ (June 2020).” (postscript).

The Harm Report and The Appeals – Discussion

Whilst we do not yet have the Judgment in the conjoined appeals, we know the broad themes that developed during submissions by the appellants, respondents and interveners on the issue of reform in private law proceedings involving domestic abuse, including:

- Whether Scott Schedules remain useful or whether a Threshold type document, which specifically links the allegations to the risk of harm to the child would be more helpful in identifying the issues;
- Whether form C1A should be amended to allow complainants to provide narrative statements of their experience in order that the wider picture of domestic abuse can be understood;

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- The voice of the child – Paragraph 13.2 of PD 12B provides that the allocated CAFCASS officer shall not initiate contact with a child prior to the FHDRA and PD 12J indicates that a s.7 report will not be ordered prior to a fact-finding hearing. Should there be provision for CAFCASS to speak to children.

Assessing Risk/ Striking a Balance – Interim Contact

Whilst the Harm report suggests that the presumption of parental involvement in s. 1(2A) of the Children Act 1989 reinforces a ‘pro contact’ culture that detracts from the court’s focus on the child’s welfare and safety (Page 174) and therefore acts as a barrier to addressing domestic abuse, CAFCASS in both its skeleton argument and oral submissions to the Court made the following important and balanced representations which the authors consider require repetition. It is essential practitioners keep these principles in mind:

‘It is important to record that, where allegations of domestic abuse are made, they are not (or they should not be) the courts only considerations at the pre and post fact finding stage of proceedings.

In most situations where domestic abuse has been raised as an issue, it is in the context of determining appropriate arrangements for the subject child. It is likely that contact between the child and one of her parents has been stopped or greatly reduced. Alternatively, the application may seek as its object to end or reduce contact between the child and one of her parents.

On the current law, it is not always necessary for contact between the child and an alleged perpetrator to be stopped, where allegations have been made...but contact should not automatically be stopped or reduced where allegations have been made...

If there is, as the Harm Report suggests, a ‘contact at all costs’ culture prevalent in the Family Court, then that approach is wrong. It would be unfortunate, however for the balance to be tipped too far in the opposite direction by the outcome of these appeals. Just as it is wrong to require contact where the risk is too great, it is also wrong to prevent all contact pending

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determination of risk without proper consideration of whether a) it is in the interests if the child to have contact with the alleged perpetrator, and as part of that analysis b) any identified risk can be managed so that contact can continue or otherwise be reinstated.

...To adopt the approach that there cannot be contact pending a full resolution of any disputed allegations would be wrong and could lead to children having a significant parental relationship undermined (and potential severed)...it is perhaps trite to state that: a) it does not follow that because one parent has perpetrated abusive acts against another it will not be in the child's interests to maintain a relationship with the abusive parent; b) similarly it does not follow that because one parent is found to pose a risk of displaying abusive behaviour, that risk cannot be managed so that they can maintain a relationship with their child; c) in rare cases the alleged victim may have exaggerated or perhaps fabricated allegations. What has to be assessed is the impact of abusive behaviour between parents on their child before any recommendations can be made about how to protect the child and promote their welfare'.

Indeed the authors would surmise that Baroness Hale's dicta in *Re B* [\[2008\] UKHL 35](#) remains relevant;

"...there are specific risks to which the court must be alive. Allegations of abuse are not being made by a neutral and expert Local Authority which has nothing to gain by making them, but by a parent who is seeking to gain an advantage in the battle against the other parent. This does not mean that they are false but it does increase the risk of misinterpretation, exaggeration or downright fabrication."