

Section 76 of the serious Crime Act 2015. Controlling or coercive behaviour in an intimate or family relationship

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

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

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

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

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

Genesis of the offence

The offence of controlling and coercive behaviour in an intimate or family relationship was introduced by section 76 of the Serious Crime Act 2015. It was a direct response to a Government redefinition of domestic violence in March 2013 which included ‘any incident or pattern of incidents of controlling, coercive or threatening behaviour’ for the first time¹.

Introduced as one part of a broad ranging attempt to modernise and tighten laws across a spectrum of criminality, press attention at the time the Act received Royal Assent mainly focused on new offences around organised crime, prisons, and child sexual abuse. The offence was largely overlooked in most of the official publicity, and was not even mentioned in the contemporaneous Home Office circular².

Despite this lack of Government fanfare, the new offence represented a major change in the law: it was the first offence on the statute books aimed specifically at domestic abuse. Women’s advocacy groups welcomed the new offence, with Polly Neate, then Chief Executive of Women’s Aid, stating that ‘Women’s Aid and other organisations campaigned to have this recognised in law, and we are thrilled that this has now happened. It is a landmark moment in the UK’s approach to domestic abuse’³.

Aside from the symbolic importance, perhaps the most major practical difference is that the section 76 offence is triable either way, in either the Magistrates’ or Crown Courts. It therefore has no time bar on when prosecutions can be brought. Prior to 2015, offences used to prosecute domestic violence were frequently summary only (for example, common assault) and therefore had a six month time limit to report them to the police. This change to an either way offence attempts to recognise first, the gravity of the offending, and second, the fact that for any number of reasons, a person subjected to controlling or coercive behaviour may take longer than six months after the incident to report it.

What are the prosecution criteria?

The offence is predicated on the principle that domestic abuse rarely happens as a single, dramatic, isolated incident, and that it is often represented by repeated or continuous behaviour which can have a cumulative effect.

There are five key elements to the offence.

¹ <https://www.gov.uk/government/news/new-definition-of-domestic-violence>

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/417131/20150325SeriousCrimeActCircular.pdf

³ <https://www.theguardian.com/society/2015/dec/29/domestic-abuse-law-controlling-coercive-behaviour>

First, the behaviour must be repeated or continuous (s76(1)(a)), in much the same way that harassment must be a 'course of conduct' rather than a one-off.

Second, the behaviour must be controlling or coercive. The Home Office statutory guidance provides a cross-Government definition as follows:

'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.'

Coercive behaviour is: 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.⁴

As to what this might look like, the CPS guidance⁵ provides a non-exhaustive list of examples, including isolating a person from their friends and family, repeatedly putting someone down such as telling them they are worthless, monitoring a person's time, control of finances such as only allowing someone a punitive allowance, taking wages or allowances, threats to hurt or kill, reputational damage, disclosure of sexual orientation, or limiting access to family, friends and finances.

Importantly, the controlling or coercive behaviour does not have to end in physical or sexual violence.

In short, this is an open definition and indeed, the CPS guidance states that 'it will be open to the courts to consider acts by a defendant and to conclude whether those acts constitute criminal behaviour'.

Third, there must be a personal connection between the complainant and the defendant (s76(1)(b)). A definition of 'personally connected' is provided by s76(2). A and B must be in an intimate personal relationship. Alternatively, A and B are personally connected if they live together and either are members of the same family, or they have previously been in an intimate personal relationship with each other.

Section 76(6) defines members of the same family as meeting one of eight criteria. These are where A and B are or have been married to each other or been civil partners, are relatives, have agreed to marry one another or become civil partners, are both parents of the same child, or have or have had parental responsibility for the same child.

Fourth, the behaviour must have a serious effect on B. This is defined at s76(4) as when A's behaviour causes B to fear on at least two occasions that violence will be used against B, or that it causes B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities. Whereas the first aspect is fairly clear-cut, the second is more ambiguous. The CPS guidance⁶ suggests that this could include stopping or changing the way someone socialises, physical or mental health deterioration, or changes to work patterns, employment status or routes to work.

Fifth, and finally, A must know or ought to know that the behaviour will have a serious effect on B. Section 76(5) states that A "ought to know" that which a reasonable person in possession of the same information would know.

Defences

Two statutory defences are available.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/482528/Controlling_or_coercive_behaviour_-_statutory_guidance.pdf

⁵ <https://www.cps.gov.uk/legal-guidance/controlling-or-coercive-behaviour-intimate-or-family-relationship>

⁶ *Ibid*

Under s76(3), B does not commit an offence if at the time of the behaviour, A has responsibility for B for the purposes of the Children and Young Persons Act 1933 and B is under 16.

Under s76(8), it is a defence for A to show that in engaging in the behaviour, A believed that he or she was acting in B's best interests, and the behaviour was in all the circumstances reasonable. Under s76(9), A can show this by adducing sufficient evidence of the facts to raise an issue with respect to them, and the contrary is not proved beyond reasonable doubt.

Relevant cases

There are very few reported cases, and a majority of those are appeals against sentence. They nevertheless help to illustrate the types of behaviour this offence is aimed at tackling.

In *R. v Stickells* [2020] EWCA Crim 1212, an appellant was unsuccessful in an appeal against a sentence of 28 months' imprisonment where he had made it impossible for his partner to see her friends, did not allow her to speak to her mother about him, accused her of being unfaithful when she put on make-up or dressed up, and threatened to kill himself when she asked him to leave as he claimed he could not live without her. On another occasion she asked him to leave, but he later returned and screwed the front door shut with a drill.

The serious effect of the conduct was demonstrated by the victim's personal statement, where she detailed that she feared to go out of the house, and described herself as "shattered as a person" because the appellant had 'broken' her. Her finances had been drained by the appellant's drug habit and she feared that would not be able to put trust in a relationship again.

In *R. v Reynolds* [2020] EWCA Crim 1024, an appellant was unsuccessful in appealing against a sentence of two years' imprisonment for controlling and coercive behaviour (although he was successful in appealing a sentence for assault occasioning actual bodily harm to which this controlling and coercive behaviour sentence was to run concurrently and which exceeded the statutory maximum). His behaviour included taking his partner's keys to the flat, attempting to isolate her from her family, checking her mobile phone and social media accounts, and deleting all her old school friends from her Facebook account that were male.

In *R. v Dalgarno* [2020] EWCA (Crim) 290, the Attorney General referred a sentence of a 24 month community order as unduly lenient. In this case, the offending included checking his partner's phone for messages from other men when she had taken her brother to hospital, dictating what she should wear, accusing her of looking at other men, demanding her phone on her return for work so he could monitor her contact with other men and her family, taking screenshots of her messages and call logs, monitoring her social media accounts, preventing her from taking her phone to work or taking it himself to prevent her using it, and calling her up to 70 times a day, demanding that she turn on the camera to show that were not other men with her. The sentence was increased to three years' imprisonment.

How would the Domestic Abuse Bill amend this?

As part of a major reform of the law surrounding domestic abuse, the Domestic Abuse Bill would widen the circumstances in which the offence can be committed.

The definition of "personally connected" under s76(2) would be widened so that the offence may apply to former partners and family members who do not live together.

The s76 offence would now cover circumstances where an agreement to marry or become civil partners has been terminated, where an intimate relationship has ended, and where two parties each have, or have had, a parental relationship in relation to the same child.

The Bill would also insert a new section 76A widening the territorial scope of the offence to include behaviour outside the United Kingdom which would constitute an offence under s76 where the person is a United Kingdom national or is habitually resident in the United Kingdom

Overlap with family law

Controlling and coercive behaviour frequently arises in family law cases, especially in non-molestation order and occupation order applications, but also children and financial proceedings. It is not, however, defined. In the recent Family Court decision of *F v M* [2021] EWFC 4, Mr Justice Hayden succinctly summarised the position:

'In the Family Court, that expression [controlling and coercive behaviour] is given no legal definition. In my judgement, it requires none. 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.'

He goes on to refer to various sources, including the s76 offence, the Family Procedure Rules 2010 PD12J, as well as the Home Office Guidance referred to above. He refers back to one of his own earlier judgments in a Court of Protection decision (*A County Council v LW* [2020] EWCOP 50) in which he states that:

'Abusive behaviour of this kind will often be tailored to the individual circumstances of those involved. The above [guidance] is no more than a check list which should prompt questioning and enquiry, the responses to which should be carefully recorded so that the wider picture emerges. That which might, in isolation, appear innocuous or insignificant may in the context of a wider evidential picture be more accurately understood'.

This is therefore the position in the family courts unless and until it is codified in statute.