

Domestic Abuse Bill 2019-2021 Public Bill Committee

1. Summary

- 1.1 Domestic abuse as defined in clause 1 of the Bill includes controlling or coercive behaviour by a present or former intimate partner, or by a close family member, whether or not they are living with their victim.
- 1.2 Controlling or coercive behaviour is also a domestic abuse offence under section 76 of the Serious Crime Act 2015. This offence can likewise be carried out by an intimate partner, former partner or close family member. However, where the perpetrator is a former partner or family member, the offence applies only to cases where perpetrator and victim share the same residence.
- 1.3 This evidence discusses the effect of excluding family victims of domestic abuse from the section 76 offence where they are living separately from their abuser.
- 1.4 Controlling or coercive behaviour as a form of domestic abuse can arise in a family relationship where the victim is dependent in some way on an abusive relative, irrespective of their living arrangements.
- 1.5 Section 2 below demonstrates that there is at present no other suitable offence under which abuse of this kind can be prosecuted in cases where abuser and victim are not living together.
- 1.6 Evidence of the way in which controlling or coercive behaviour by a relative can affect elderly or disabled victims who live alone is summarised in section 3.
- 1.7 Section 4 discusses and contains links to the account of one survivor, who is supporting me in campaigning for reform of this offence. Her experience of 22 years of abuse illustrates vividly the inadequacy of the present law.
- 1.8 Section 5 suggests that the exclusions from the present section 76 offence raises doubts over the UK's compliance with the Istanbul Convention.
- 1.9 **A possible amendment to bring abuse by family members living separately within the scope of section 76 is then included as ANNEX 1.**
- 1.10 Alex Ruck-Keene, Barrister,¹ has confirmed that he entirely agrees with this amendment, as being a limited step towards ensuring the adequate protection of individuals who (1) do not lack capacity for purposes of the Mental Capacity Act 2005, but (2) are in some way vulnerable to coercion or duress on the part of third parties. Mr. Ruck-Keene discusses the significant gap in the protections available for these individuals at <https://www.mentalcapacitylawandpolicy.org.uk/vulnerable-adults-bill-help-wanted/>.

¹ Wellcome Research Fellow and Visiting Lecturer at the Dickson Poon School of Law, King's College London; Visiting Senior Lecturer, Institute of Psychiatry, Psychology & Neuroscience, King's College London; Research Affiliate, Essex Autonomy Project, University of Essex

2. Inadequacy of existing offences

- 2.1 Following its 2014 consultation on the Serious Crime Bill 2014-15, the government recognised the need for an offence covering controlling or coercive behaviour within families as well as between intimate partners, particularly where existing offences of stalking and harassment were not applicable:

“Domestic abuse approaches to date have tended to highlight partner violence, however there is a need to consider the impact of family and intergenerational forms of domestic abuse that particularly affect older people” – response from a ‘Charity’”;

“There are many laws which cover the complex behaviours which manifest as domestic abuse but there is a gap where harassment and stalking legislation does not explicitly cover behaviour within the context of a familial relationship” – response from a ‘Policing expert’”;

“Other [responses] highlighted the different dynamics of stalking and harassment compared with controlling behaviour within a relationship, and the need for a distinct legal framework to tackle a specific problem”.

- 2.2 The government’s impact assessment on the proposed new offence² then further explained that,

“The element of control is not such a feature of stalking or harassment, which is generally intended to intimidate or cause fear. Domestic abuse adds an extra layer to such intimidation, with perpetrators relying on the fact that they are a close relation or partner to conceal their abuse, and safe in the presumption that the victim is likely to want to continue a relationship despite the abuse. For these reasons, domestic abuse may be said to be more subversive than stalking”.

After the Serious Crime Act 2015 had passed into law, the Home Office Fact Sheet³ on the new section 76 offence reiterated this same point.

- 2.3 Similarly, the current CPS Guidelines on section 76 make clear that,

“It is important to understand the difference between the offences of controlling or coercive behaviour and those involving stalking and harassment. ...

The offence of controlling or coercive behaviour has been introduced specifically to capture abuse in an ongoing relationship where the parties are personally connected, as defined in section 76(2)”.

- 2.4 Therefore, controlling or coercive behaviour within families, as distinct from stalking or harassment, is characterised by an ongoing relationship on which the victim depends, rather than on joint residence. For example, economic abuse carried out by means of controlling or coercive behaviour does not become stalking or harassment simply because the victim lives alone. This point was actually made during the passage of the Serious Crime Bill in 2015 by Elfin Llwyd MP, when he voiced concern that the new offence as drafted “*would not cover family members who suffer from coercive control at the hands of another family member who does not live with them. That can take many forms, for example, financial abuse*”.⁴

- 2.5 Thus, stalking and harassment legislation remains inadequate to protect victims of controlling or coercive behaviour within family relationships which involve an ongoing “*element of control*”.

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/393814/Impact_Assessment_-_Strengthening_the_Law_on_Domestic_Abuse.pdf (paragraph 20)

³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/416011/Fact_sheet_-_Domestic_Abuse_Offence_-_Act.pdf (paragraphs 8-9)

⁴ <https://www.publications.parliament.uk/pa/cm201415/cmpublic/seriouscrime/150120/pm/150120s01.htm> (col. 172)

3. The Effect on Victims

- 3.1 Denial of section 76 protection for family victims living alone discriminates against some of the most disadvantaged or vulnerable members of society.

Older People

- 3.2 Research carried out into the abuse of older people living in the community by the National Centre for Social Research and King's College London in 2007 found that living alone more than tripled the likelihood of an older person suffering financial abuse.⁵ Most perpetrators of financial abuse were family members rather than partners,⁶ and only 25% actually lived with their victims.⁷
- 3.3 According to the 2015 Financial Abuse Evidence Review by Age UK, 50% of the financial abuse perpetrated against older people in the UK is by adult children.⁸ Similarly, Action on Elder Abuse (now known as 'Hourglass') found that the majority of perpetrators the financial abuse reported to them in 2013 were sons and/or daughters or other family members.⁹ They have referred to "elder abuse within older people's own homes ... often perpetrated by members of their own family" as "the hidden abuse of UK society".¹⁰
- 3.4 In their 2008 report 'The Financial Abuse of Older People', Help the Aged cited earlier research finding that:

"Adult children were most frequently implicated as abusers. ... victims of financial abuse were often very dependent on the person abusing them for physical, social and/or emotional support".¹¹

They also noted as follows:¹²

"Victims of [financial] abuse may be ashamed or fearful and therefore unwilling to report it or refuse to recognise the abuse. They may also be socially isolated with no one to share their concerns with, and therefore not able to discuss and confirm their suspicions that they are being exploited. Alternatively, they may be fully aware that they are being taken advantage of but for other reasons choose not to do anything about it (Penhale, 2003). For instance, the victim may depend on the abuser for social and emotional support (Wilson et al., 2003)".

- 3.5 Where isolated elderly victims are frightened to cooperate with the authorities, extending the Controlling or Coercive Behaviour offence would enable 'victimless prosecutions' to take place, as is the practice for domestic abuse more generally.

⁵ <http://natcen.ac.uk/media/308684/p2512-uk-elder-abuse-final-for-circulation.pdf>, Table 3.5

⁶ *ibid.*, Table 4.1

⁷ *ibid.*, Table 4.4

⁸ https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/reports-and-briefings/money-matters/financial_abuse_evidence_review-nov_2015.pdf

⁹ AEA Briefing Paper "The Cost of living: 'growing up is free, growing old is expensive'" (unpublished).

¹⁰ http://www.cpa.org.uk/cpa/briefing_paper_prevalence.pdf (page 5)

¹¹ <http://www.cpa.org.uk/information/reviews/financialabuse240408%5B1%5D.pdf> (3.7)

¹² *ibid.* (3.5.1)

Disabled People

- 3.6 It is not just elderly people who suffer controlling or coercive behaviour from family members, whether living together or separately.
- 3.7 Shaping Our Lives, the leading national user-led organisation for disabled people, conducted a user-led project in 2019 involving disabled women who have experienced abuse. They reported that,

“The high incidence of violence and abuse among disabled people is related to being dependent on their family and informal networks for care and support. These caring relationships provide additional opportunities for perpetrators to abuse and coercively control. The perpetrator can coercively control the disabled person by withholding essential support such as food, medication or prevent them going out independently. This type of abuse can be done by a family member wherever they live and this type of coercive control would not be easily recognised by the legislation around stalking. ... There is no correlation between perpetrator behaviour and where they live in relation to the disabled person.”¹³

4. Case Study

- 4.1 If an example were needed to illustrate the points made above, the disturbing story of one survivor, ‘Jane’, underlines starkly the way in which a dependent family relationship can expose a victim to subversive forms of control and coercion - despite her living alone - involving both financial and emotional abuse, to which the law on stalking and harassment was quite irrelevant.
- 4.2 ‘Jane’, who has a mild learning disability, was unable to speak out against the degrading and infantilising regime of control to which she was subjected over a period of 22 years, and which ended only with the death of her abuser. Repeated safeguarding alerts were not acted upon by the local authority, who considered that ‘Jane’ was not suffering any duress and had the mental capacity to refuse consent to their intervention. Although ‘Jane’s’ abuser was the donee of a Lasting Power of Attorney for her health and welfare, the Office of the Public Guardian similarly declined to intervene. Neither the safeguarding regime under the Care Act 2014 nor the provisions of the Mental Capacity Act 2005 were effective in protecting ‘Jane’. The overbearing nature of the abuse prevented her from acknowledging this openly until after her abuser had died.
- 4.3 ‘Jane’s’ experience is recounted in an edited transcript of a video interview arranged by her landlord, a local homelessness charity. There is a link to her account in the blogs at:
- <https://mailchi.mp/0ec4be0377ae/shaping-our-lives-insight-about-controlling-or-coercive-behaviour-in-a-family-relationship>, and
 - <https://safelives.org.uk/policyblog> (29.1.20 blog post).¹⁴
- 4.4 Again, bringing abuse of this kind within the scope of the Controlling or Coercive Behaviour offence would enable victims such as ‘Jane’ to be protected through ‘victimless’ domestic abuse prosecutions, even where they were inhibited from cooperating with the authorities.
- 4.5 **‘Jane’ would be most grateful to meet any members of the Public Bill Committee who would like to hear her story at first hand in her home town in the South of England (subject of course to the coronavirus ‘lockdown’ having been lifted).**

¹³ Joint submission by Shaping Our Lives and Andrew Todd to the Joint Select Committee on the Draft Domestic Abuse Bill 2017-2019. The blog posts referred to at 4.3 below contain a link to this submission.

¹⁴ These are identical apart from the introductions, but are both referred to here in case website connection problems arise.

5. Istanbul Convention

5.1 The government intends the Domestic Abuse Bill to enable the UK to comply with, and therefore to be able to ratify, the 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention).

5.2 Article 3 of the Convention defines 'domestic violence' as,

"all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim".

The Council of Europe's Explanatory Report on the Convention makes clear that this violence includes, for example,

"Inter-generational domestic violence [which] includes physical, sexual, psychological and economic violence by a person against her or his child or parent (elderly abuse) ... Again, a joint residence of the victim and perpetrator is not required".¹⁵

5.3 Article 33 of the Convention, on 'Psychological violence', then provides as follows:

"Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of seriously impairing a person's psychological integrity through coercion or threats is criminalised".¹⁶

5.4 In view of the above Article 3 definition, the section 76 offence of 'Controlling or coercive behaviour in an intimate or family relationship' does not, as presently defined, appear to implement fully Article 33 within UK law in respect of psychological or economic violence, either within the family or between former partners, where perpetrator and victim do not share the same residence.

¹⁵ <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d383a> (paragraphs 41-42)

¹⁶ The article 33 obligation applies to both violence against women and domestic violence (as defined in Article 3); this is confirmed in paragraph 149 of the Explanatory Report.

Amendment to Section 76, Serious Crime Act 2015

Explanatory Statement (as recommended in the MPs' Guide to Procedure at <https://beta.parliament.uk/articles/g13h3dnB>):

The offence of Controlling or Coercive Behaviour covers such behaviour when carried out by a relative, but only when they are living with their victim. The following amendment brings within the scope of the offence the same kind of abuse where perpetrator and victim live apart.

XX Controlling or coercive behaviour offence

- (1) In Part 5 (protection of children and others) of the Serious Crime Act 2015, Section 76 (controlling or coercive behaviour in an intimate or family relationship) is amended as follows.
- (2) In subsection (2)—
 - (a) For paragraph (b) substitute—
 - “(b) A and B are members of the same family, or”.
 - (b) After that paragraph insert—
 - “(c) A and B live together and have previously been in an intimate personal relationship with each other.”.
- (3) In subsection (6), for “(2)(b)(i)” substitute “(2)(b)”.

Existing Section 76

- (2) A and B are “personally connected” if—
 - (a) A is in an intimate personal relationship with B, or
 - (b) A and B live together and—
 - (i) they are members of the same family, or
 - (ii) they have previously been in an intimate personal relationship with each other.
- (6) For the purposes of subsection (2)(b)(i) A and B are members of the same family if—
 - (a) they are, or have been, married to each other; ...
 - (c) they are relatives; ...
- (7) In subsection (6)—

...

“relative” has the meaning given by section 63(1) of the Family Law Act 1996. ...

Section 76 as amended

- (2) A and B are “personally connected” if—
 - (a) A is in an intimate personal relationship with B, or
 - (b) A and B are members of the same family, or
 - (c) A and B live together and have previously been in an intimate personal relationship with each other.
- (6) For the purposes of subsection (2)(b) A and B are members of the same family if— ...

May 2020