

**WELCOME TO ONE PUMP COURT'S
INTERNATIONAL WOMENS DAY FAMILY LAW SEMINAR:
DOMESTIC ABUSE IN PRIVATE FAMILY LAW**

15.00 – 16.00

Domestic Violence Update

Speakers: Sophie Walker, Catherine Philps,

Chair: Grace Cowell

D/E



F V M [2021] EWFC 4; COERCIVE AND CONTROLLING BEHAVIOUR

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F v M [2021] EWFC 4- Coercive and controlling behaviour

- Understanding the scope and ambit of the behaviour 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.
- **I have taken the opportunity below, to highlight the insidious reach of this facet of domestic abuse. My strong impression, having heard the disturbing evidence in this case, is that it requires greater awareness and, I strongly suspect, more focused training for the relevant professionals.**



F v M [2021] EWFC 4- Coercive and controlling behaviour

On example:

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."

...it illustrates how something which, on the face of it, 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 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...

F v M [2021] EWFC 4 – coercive and controlling behaviour

- The statutory guidance published by the Home Office identified paradigm behaviours in cases of coercive and controlling abuse. Hayden J in **A County Council v LW (supra)** identified those factors that he considered as particularly apposite in the context of vulnerable adults:
 - 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



F v M [2021] EWFC 4— coercive and controlling behaviour

- 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 reveal or publish private information (e.g. threatening to 'out' someone, or reveal their HIV status)
- Threats to hurt or physically harming a family pet
- Criminal damage (such as destruction of household goods)
- Preventing a person from having access to transport
- Preventing a person from being able to attend school, college or University
- Family 'dishonour'



F v M [2021] EWFC 4 – coercive and controlling behaviour

- Hayden J refers to his own conclusions in that case:

*22. It is important to emphasise that **this list is not exhaustive**. It does not, for example, include controlling intake of food and nutrition, which was such a striking facet of the evidence here. Abusive behaviour of this kind will often be tailored to the individual circumstances of those involved. The above 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.**"*

F v M [2021] EWFC 4 – coercive and controlling behaviour

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 76 of the Serious Crime 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 12J is therefore 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.*

F v M [2021] EWFC 4– Scott Schedules

- *Whilst I entirely see the advantage of carefully marshalling the evidence and honing down the allegations, 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.***
- *...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.*

F v M [2021] EWFC 4 – Scott Schedules

- *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.***
- *It is, I hope, clear from my analysis of the evidence in this case, that I consider Scott Schedules to have such severe limitations in this particular sphere as to render them **both ineffective and frequently unsuitable.***
- *I would 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.*
- *I do not discount the possibility that there will be cases when they have real forensic utility. **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.***

Practical tips – Scott Schedules in cases of coercive and controlling behaviour

- The usual 5 or 6 allegations may not be enough to illustrate the pattern of behaviour
- The other side may argue the allegations are not serious or relevant to welfare
 - Significant in the wider context of the pattern of behavior
 - F in this case was profoundly dangerous to women and child – clearly relevant to welfare
- Time estimate of a fact finding hearing may be longer

PRACTICE DIRECTION 12J; CASE LAW AND PRACTICAL TIPS



Re L (Contact: Domestic Violence)

- *Re L (Contact: Domestic Violence)* [\[2000\] 2 FCR 404](#)
 - Where an allegation of domestic violence was made which might have **an effect on the outcome** then it should be adjudicated on and found proved or not;
 - As a matter of principle, domestic violence is not a bar to contact but is **one factor in a delicate balancing exercise of discretion**
 - The seriousness of the domestic violence
 - Risks involved
 - Impact on child;
 - Ability of the parent to recognise past conduct and make genuine efforts to change
 - Positive factors in favour of contact
 - Conduct of both parents towards each other and the children
 - Motivation of parent in seeking contact
 - In the interim, where the issue of domestic violence has not been adjudicated on, the court should give particular consideration to the likelihood of harm to the child if contact were granted or refused. The court should ensure, as far as it can, **that the safety of the child and residential parent is secured before, during and after such contact.**



Whether a fact finding hearing is necessary?

A (Children) [2006] EWCA Civ 1609

- A decision was taken that a fact finding hearing was not necessary in part because M had already allowed F unsupervised overnight contact since the allegation

W (Children) (Contact Order), [2005] EWCA Civ 575

- M had already agreed visiting contact and had not previously raised violence as a reason for objecting to staying contact, the judge had been entitled to proceed on the basis that historical allegations of violence had no direct relevance to the questions he had to resolve.

Contact – old case law

H (A Child) (Contact: Domestic Violence), Re [\[2005\] EWCA Civ 1404](#)

S v S (Interim Contact) [\[2009\] EWHC 1575 \(Fam\)](#)

- Where there are allegations of domestic violence which, if proved, will be relevant to the issue of whether and if so what contact should be ordered, an order for interim contact, prior to the determination of the allegations of domestic violence, **should not normally be made**.
- However, it was a permissible exercise of judicial discretion to order supervised contact where a fact-finding hearing was adjourned for a period of four months. **The longer the delays, the more inimical to the best interests of the child**

Re K (Contact: Mother's Anxiety) [\[1999\] 2 FLR 703](#).

- Wall J held that M had been so traumatised by the father's past abuse – which included kidnapping the child – and found facilitating supervised contact so stressful that the risk of emotional harm to the child of further direct contact was too great



Practice Direction 12J – some key details

- Its application is **mandatory**
- The court **must** in every case consider carefully whether the statutory presumption – that the involvement of a parent in a child's life will further the child's welfare – applies having regard to allegations/admissions [**§7**]
- The Court **must not** make an interim child arrangements orders at the FHDRA in the absence of safeguarding checks (unless it is to ensure the safety of the child and/or safeguard them from harm) [**§12**]
- Admissions of domestic abuse **must** be recorded and set out in a schedule [**§15**]
- If the Court determines a FFH is not necessary, it must record its reasons [**§18**]
- Judicial continuity is important [**§20**]
- The court should, wherever practicable, make findings of fact as to the nature and degree of any domestic abuse which is established and **its effect on the child, the child's parents and any other relevant person** [**§29**].

Practice Direction 12J – whether a fact finding hearing is necessary

- In determining whether it is necessary to conduct a fact-finding hearing, the court should consider –
- (a) the views of the parties and of Cafcass;
- (b) whether there are admissions by a party which provide a sufficient factual basis on which to proceed;
- (c) if a party is in receipt of legal aid, whether the evidence required to be provided to obtain legal aid provides a sufficient factual basis on which to proceed;
- (d) whether there is other evidence available to the court that provides a sufficient factual basis on which to proceed;
- (e) whether the factors set out in paragraphs 36 and 37 below can be determined without a fact-finding hearing;
- (f) the nature of the evidence required to resolve disputed allegations;
- (g) whether the nature and extent of the allegations, if proved, would be relevant to the issue before the court; and
- (h) whether a separate fact-finding hearing would be necessary and proportionate in all the circumstances of the case.

Practice direction 12J - Interim contact

- Where the court gives directions for a fact-finding hearing, or where disputed allegations of domestic abuse are otherwise undetermined, the court should not make an interim child arrangements order unless it is satisfied that it **is in the interests of the child to do so** and that the order would not expose the child **or the other parent** to an **unmanageable risk of harm** (bearing in mind the impact which domestic **abuse against a parent can have on the emotional well-being of the child**, the safety of the other parent and the need to protect against domestic abuse including controlling or coercive behaviour).

Practice Direction 12J - case law

Whether a FFH is necessary

V (A Child) [2015] EWCA Civ 274

- “I confess I do not understand why it was thought necessary to make this particular fact finding investigation into these allegations of domestic violence at all. The Mother, initially at least, said that it was not concerned about domestic violence that caused her to oppose contact with the father, although she did later resile from that position . . . Save for one incident in April 2013, after contact had already ceased, all the incidents even if witnessed by [the child] at all, occurred before the child was 14 months old and before before he was 6 months old. The child was too young to suffer any lasting trauma from these incidents.”



Practice Direction 12J - case law

Consequence of findings being made

- **MS v MN [2017] EWHC 324 (Fam)**
- Following fact-finding hearing where a number of serious findings were made against the Father, including an incident where the child was present, the judge ordered direct contact without correctly applying PD 12 J nor Cafcass conducting a risk assessment under s16A of Children Act.
- The Father's behaviour indicated a pattern of coercive control, domestic violence in other relationships and failure to undertake court-ordered drug testing.



Practice Direction 12J - case law

Consequence of findings being made

- **A (Supervised Contact Order: Assessment of Impact of Domestic Violence) [2015] EWCA Civ 486**
- Following fact-finding hearing where Father had been guilty of abusive sexual conduct towards the Mother during the course of their relationship. At the subsequent welfare hearing, Court ordered supervised contact with the child:
 - No risk to Mother or child as contact took place in supervised setting
 - Findings were compatible with PD12J even though no express reference to it.

Scott Schedules – practical tips

- When drafting Scott Schedules try choose:
 - The most serious allegations
 - The most recent allegations
 - The most **provable** allegations
- Try to procure police evidence as early as possible and before evidence is filed



DOMESTIC ABUSE BILL



Domestic Abuse Bill – s31R prohibition on cross examining in person

In family proceedings, no party to the proceedings who has been

- convicted of or given a caution for, or is charged with, a specified offence may cross-examine in person a witness who is the victim, or alleged victim, of that offence (and vice versa).
- against whom an on-notice protective injunction is in force may cross-examine in person a witness who is protected by the injunction (and vice versa).



Domestic Abuse Bill – s31 T - U

prohibition on cross examining in person (cont)

Prohibition on cross-examination also applies to:

- Where specified evidence is adduced that a person who is a witness/ party has been a victim of domestic abuse carried out by a party to the proceedings, that party to the proceedings may not cross-examine the witness in person (31T(1-2))
- Any witness where *“it appears that (i) the quality condition or significant distress condition is met, and (ii) it would be contrary to the interests of justice to give the direction”* (31U).



THANK YOU FOR
ATTENDING!
