
COERCIVE CONTROL AS MITIGATION AT SENTENCING

Professor Vanessa Bettinson
Northumbria University

June 2024

EXECUTIVE SUMMARY

- Coercive control is a recognised form of domestic abuse under section 1 of the Domestic Abuse Act 2021 and it is a criminal offence to engage in controlling or coercive behaviour in an intimate or family relationship under section 76 of the Serious Crime Act 2015. Domestic abuse disproportionately affects women as victims and this is reflected in the female prison population where research has found that 57% of women in the prison population in England and Wales have been victims of domestic abuse.
- Coercive control by a male intimate partner or relative can directly result in women's offending. This occurs in a variety of ways such as taking responsibility for a partner's crime, possession of a controlled substance belonging to an abuser and theft to support a partner's drug habit, stealing personal items or using violent resistance against the abuser.
- Coercive control has also been linked to women's reoffending with short custodial sentences leading to financial hardship and homelessness. Access to women's refuges is limited as female offenders often have complex and multiple needs which make them ineligible for most refuges. Returning to an abuser to avoid homelessness is likely to lead to the continuation of coerced offending. Abusive partners can also prevent a female offender from complying with supervision under a community order by exerting coercive and controlling behaviours on them. In an effort to maintain their safety, the victim-offender can perceive that compliance with the abuser's demands is their safest option.
- Existing sentencing guidelines do recognise 'coercion, intimidation or exploitation' as a mitigating factor in sentencing. It can operate as a factor that lowers the culpability threshold in some offence-specific sentencing guidelines or, alternatively, it can be assessed as personal mitigation in accordance with the Sentencing Council's 'General guideline: overarching principles'. This means there is a high potential that coercive control as mitigation in sentencing is not consistently applied to all sentencing decisions.
- The guidelines do not explicitly adopt the term coercive control and sentencers could be limiting their approach to coercion for mitigation purposes to physical forms of coercion. HM Courts and Tribunals ought to apply the statutory guideline that supports the Domestic Abuse Act 2021 at sentencing hearings, however, there is no research on the ability of sentencers to identify coercive control and apply it to sentencing decisions.
- Pre-Sentence Reports (PSRs) are a valuable tool to assist the court in understanding the role coercive control played in the offending, however, there is a reduction in the volume of full written PSRs being requested by courts. In addition, there is no research on the ability of probation officers to identify coercive control and the extent it is included in PSRs.

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1. INTRODUCTION

Coercive control in an intimate or family relationship is recognised as a criminal offence under section 76 of the Serious Crime Act 2015. It is a form of domestic abuse contained in the Domestic Abuse Act 2021 and Office for National Statistics (ONS) figures show that a considerable majority of victims of this crime are female and offenders are male (ONS, 2020). The gendered nature of domestic abuse is also reflected in the female prison population where research has found that 57% of women in the prison population of England and Wales have been victims (Prison Reform Trust, 2017). This number rises to 63% for those aged between 16 and 25 (Centre for Women’s Justice, 2022) and a study by Muslim Hands found that 71% of Muslim women in prison taking part in their study had experienced domestic abuse (Muslim Hands, 2018). However, these figures are likely to be an underestimate as women offenders face a number of challenges to disclosing their experiences of domestic abuse, which include a fear of losing their children, not being believed or seen to be making excuses for their crimes (Howes et al., 2021).

The Prison Reform Trust (2017) has found that coercive control by a male intimate partner or relative does result in many women’s offending. The relationship between women’s offending and experience of coercive control is therefore significant for the purposes of sentencing. There has been recent recognition of this in Clare Wade KC’s Domestic Homicide Sentencing Review (Ministry of Justice, 2023a) with the Government response indicating future plans for sentencing reforms in homicide cases where a victim of domestic abuse / coercive control kills their abuser (Ministry of Justice, 2023b). However, these potential reforms are limited to offences ending in death which includes only a small number of women. For example, from March 2022 to April 2023, 13 male victims were killed by a partner or ex-partner, although the table does not state the sex of the offender and therefore the number of female offenders could be less than 13 (ONS Appendix table, 2024).¹ Reforms to the sentencing of domestic homicide offences will not produce change for those who commit any other crimes arising from coercive control, a much larger category of offender.

There is some recognition of coercion within the existing Sentencing Council guidelines. Since 2019, the ‘General guideline: overarching principles’ include as a factor for mitigation involvement ‘through coercion, intimidation or exploitation’. This applies to sentencing offences whether there is or is not an offence-specific guideline. Where there are offence-specific guidelines, sentencers should avoid double counting this factor where it is already stated as relevant to determining the applicable culpability level. The guidance notes that involvement in an offence ‘through coercion, intimidation or exploitation’ is to be considered where the offender has been a victim of domestic abuse and that the offender may not be able to articulate that experience.

Despite highlighting the significance of coercion in the context of domestic abuse in the Sentencing Council’s General guideline, there is no specific reference to coercive or controlling behaviour. The cross-government policy definition of this behaviour explains that controlling behaviour is ‘a range of acts designed to make a person subordinate and/or dependent by isolating them from sources

¹ <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/appendixtableshomicideinenglandandwales> (accessed 3 May 2024).

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' (Home Office, 2013). Coercive behaviour is described as 'a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim' (Home Office, 2013). As the Sentencing Council's General guideline does not explicitly refer to coercive control, merely 'coercion' and 'intimidation', sentencers are not encouraged to identify non-physical methods of this form of abuse and its full impact upon the victim-offender. This may mean that coercive control is not identified by the sentencing court as a mitigating factor unless there is presence of physical coercion. Coercive or controlling behaviour is listed as a form of domestic abuse under section 1 of the Domestic Abuse Act 2021 and statutory guidance is available for reference to a wide range of statutory bodies including HM Courts and Tribunal Service, although this guidance does not specify that it applies in relation to victim-offenders (Home Office, 2022).

Where the offender has been a victim of domestic abuse, the Sentencing Council's General guideline states that it is appropriate for the sentencing court to request a pre-sentence report (PSR). Research raising concerns about the need for speedier processes which may reduce the quality of PSRs in general and the frequency of requests by sentencers has been presented by Robinson (2022). These concerns will be relevant in cases where coercive control has played a part in the offending, and there is no research on the extent PSRs identify the impact coercive control has had on the offender, or the extent sentencing courts take this into account when determining sentence. Swaine Williams (2024) has argued for training on domestic abuse and its impact at all levels of the criminal justice system including the Probation Service.

In addition, there is little research on the judiciary's understanding of coercive control and ability to identify it in general and no research on how the judiciary apply coercive control as a mitigating factor in sentencing. Such research would indicate whether sentencing decision-making is consistent in cases where the offending was driven by coercive control.

2. UNDERSTANDING COERCIVE CONTROL

Domestic Abuse is legally defined by section 1 of the Domestic Abuse Act 2021 (DAA 2021) and includes: (a) physical or sexual abuse; (b) violent or threatening behaviour; (c) controlling or coercive behaviour; (d) economic abuse; and (e) psychological, emotional or other abuse.² Coercive control, the term adopted in the literature (Stark, 2007), is listed as one form of abusive behaviour which is misleading, as Wiener (2024) notes it consists of any of the other forms of abusive behaviour listed in section 1 of the DAA 2021.

The term coercive control has been popularised by the work of Evan Stark, although it had been identified earlier by feminist scholars (Dutton and Painter, 1981). Coercive control involves a strategy by the abuser to ensure victim compliance using techniques such as those listed in section

² Section 1(3) of the DAA 2021.

1 of the DAA 2021. It is criminalised under section 76 of the Serious Crime Act 2015, although the behaviours are defined in policy guidance and not statute (Home Office, 2013). The tactics adopted by the abuser can therefore involve a combination of physical or non-physical, criminal and non-criminal behaviours that result in the regulation of every aspect of the victim's life. Refusals to comply with the abuser's demands result in punishment. The emotional harm is significant and the systematic nature of the abuse adopted by the abuser breaks down the resilience of the victim (Stark, 2007). Coercive control is therefore intentional acts by an abuser designed to generate fear and intimidation in a domestic relationship in order to secure the victim's compliance with their demands. The behaviour is successful as the abuser uses credible threats to gain control over the victim.

Its impact upon the victim is profound causing a breakdown in a person's independence leaving them with reduced capacity to exercise choice as they are constrained by the abuser's rules. Evidence shows that many victims succumb to suicide with those subject to domestic abuse / coercive control five times more likely to attempt suicide than those not subjected to it (Munro and Aitken, 2018).

Statutory guidance on the Act, issued in line with section 84 of the DAA 2021 aims to increase awareness and inform the response to domestic abuse (Home Office, 2022). The legal definition and supporting guidance allow for a shared definition for all organisations and the preceding consultation emphasised the benefit of doing so should be to prevent 'myths and stereotypes [that] lead to victims receiving negative responses, poor advice which exacerbates suffering' (HM Government, 2018, p. 11). Consequently, section 1 of the DAA 2021 gives domestic abuse and all its forms a higher profile in public consciousness generally, which should translate to a higher profile in the criminal justice system.

3. THE LINKS BETWEEN COERCIVE CONTROL AND OFFENDING

Domestic abuse in the form of coercive and controlling behaviours by a male intimate partner or relative has directly resulted in many women's offending (Barlow, 2016; Prison Reform Trust, 2017). Whilst domestic abuse and coercive control are gendered, males can also be victims (Gadd et al., 2003; Donovan and Barnes, 2020). However, the extent to which male offending is the consequence of coercive control experiences has not been identified and is an area where further research should be considered.

In some instances, the Prison Reform Trust (2017) found that women offenders had been coerced by an intimate partner to take responsibility for their partner's crime. Within the context of a domestically abusive intimate relationship the victim feels a mixture of emotions – fear and love. Klaver et al.'s (2008) research indicates that women are more likely to confess to crimes that they have not committed out of love and loyalty in order to protect their male partner or family member

than their male counterparts. Barlow argues that love and fear should not be treated as separate motivating factors for women offenders and instead 'should be viewed as part of the same continuum' (2023, p. 88). This is because coercive and controlling behaviour exploits the victim's emotions of love and fear in order to bend them to the will of the abuser.

Crimes committed where there is a background of coercive control vary, with typical examples including drug-related offences such as possession of a controlled substance belonging to an abuser and theft to support a partner's drug habit (HM Government, 2018). The Prison Reform Trust found that nearly half of women offenders reported having done this (48%) compared with 22% of male offenders (2017, p. 8). Women also offend where they use violent resistance against their abuser. Dichter et al. (2018) discovered that women's use of violent resistance is greater where they experience coercive control compared with those who do not. In such circumstances, it should be possible for the defendant to raise a defence, such as self-defence, which leads to an acquittal. However, women find it challenging to access the defence. A key reason for this is that because there is typically a size disparity between men and women, women are more likely to use a weapon and cause more serious harm (Edwards, 2022; Bettinson and Wake, 2024). The Prison Reform Trust also found that where women offenders lacked independent finances due to economic abuse, they stole personal items such as nappies and sanitary products. Others may offend as a consequence of misusing substances as a coping strategy whilst being abused (Prison Reform Trust, 2017, p. 11; Barlow, 2016).

Women's reoffending has also been linked to experiences of coercive control in intimate relationships as short custodial sentences can lead to financial hardship, lack of accommodation, social support deficits and stigmatisation (Barlow, 2016; Prison Reform Trust 2017). This means the offender is faced with the 'choice' of 'returning to her abusive partner and likely continuing to engage in co-offending, or being homeless' (Barlow, 2023, p. 90), or alternatively, they may form new relationships where they are vulnerable to abuse and go on to commit further coerced offending to avoid being homeless (Vickers and Wilcox, 2011). Refuge places are limited for female offenders as their complex and multiple needs make them ineligible for most refuges (Harris and Hodges, 2019). Community orders can be beneficial within a woman-specific framework and delivered from women only spaces, however, for some women reoffending occurs where the abusive partner interferes with their ability to attend through coercively controlling techniques leading to a breach of the order (Vickers and Wilcox, 2011). Greater safety, as perceived by the victim-offender, lies with compliance in relation to the abuser's demands rather than in satisfying the conditions of a community order (Roberts, 2015).

Sentencing therefore has a significant impact upon the lives of the coerced and controlled offender beyond the lifetime of the sentence itself. An offender experiencing domestic abuse and coercive control and whose offending is a direct consequence of it are victims. The criminal justice system should consistently embed understandings of domestic abuse throughout. As Baroness Kennedy has said, 'there is a double standard... as soon as you move to that which involves crime and a woman, or anybody who is abused... in the dock, then suddenly your compassion for the issue of

domestic abuse somehow dissipates'.³ To address this double standard, sentencing considerations of the harm and culpability of the offender need to take into account the vulnerability of the offender experiencing domestic abuse and coercive control. The next section explains how coercive control impacts upon the victim's agency and responsibility.

4. REDUCED CULPABILITY

The effect of domestic abuse / coercive control erodes a person's capacity for choice or, as Sharps-Jeff et al. (2018) explain, removes their 'space for action'. Culpability in the context of offending is therefore reduced. This is not to deny victims, whether they offend or not, of all agency. But when in an abusive relationship, navigating personal safety within it becomes a priority and the abuse is shaped by the structural and social position of the victim (Fleetwood, 2015). This will have an impact on the available 'choices' the victim believes they have in terms of responding to the abuse. In fact, there are a number of protective strategies that domestic abuse victims adopt, for example, compliance, violent resistance, calling the police (Hamby, 2014). For a non-survivor of domestic abuse, the seemingly gold standard protective strategy is considered to be leaving the relationship. However, as a means of prioritising safety it is a poor strategy for most victims given the increased danger victims can experience at that stage (Herring, 2007).

Victims with intersectional characteristics such as class, sexuality, age, disability, race, religion, ethnicity, migrant status face particular challenges in seeking help and support to leave the relationship. For example, where they are known to the State authorities in some capacity, a fear of reporting the abuse is that their children may be taken away from them (Baldwin and Abbott, 2023). Black, Asian, migrant or otherwise minoritised women mistrust authorities, including criminal justice agencies, whose discriminatory attitudes leads to failures to recognise abuse and susceptibility to cultural and racial myths and stereotypes (Swaine Williams, 2024). Community dynamics for Muslim women can deter help-seeking from authorities as they face concepts of honour and shame, violent reprisals, isolation and social ostracism for themselves and their children (Centre for Women's Justice, 2022). Migrant women may fear separation from their children, unsure of their immigration status should the relationship end.

The legal issue of personal responsibility must be underpinned by an understanding of how coercive control operates to undermine an individual's autonomy, leaving them vulnerable to more abuse and offending. It is not necessary to frame the offender as 'helpless', but to appreciate that they are entangled in a web of control with a restricted amount of agency to navigate the persistent background of threat and risk created and orchestrated by the abuser (Bettinson et al., 2024a).

In order to assist with this exercise, Tolmie et al. argue that coercive control should be located within a broader conceptualisation of domestic abuse; they describe this social and systemic entrapment

3 HL Deb (3 February 2021) vol. 809, col. 2291.

in legal, policy and practical contexts which make the experiences of all victims of the abuse visible (2024, p. 55). This concept would be useful for sentencers when applying coercive control as mitigation at sentencing. The approach places a focus on both the abusive behaviour itself, the effects of state neglect and abuse of victim-survivors of domestic abuse and how this shapes the victim's responses to the abuse.

Current literature has applied social entrapment conceptually to the application of the defence of self-defence highlighting how its different dimensions can apply to that context (Douglas et al., 2021; Bettinson and Wake, 2024). Current sentencing guidelines do not adopt such an approach, but should they be incorporated, the dimensions would invite the decision-maker to take into account: (i) the form the coercive control takes and its effect on the victim-offender; (ii) the institutional responses (perceived or actual) to the victim's experiences of abuse; and (iii) how the coercive control has been exacerbated by the structural inequities arising from factors such as gender, class, race, age, disability, socio-economic position. In adopting this approach, the sentencer would acknowledge the offender's agency in committing the crime, and accept the reduced culpability of the offender. Their personal responsibility would be understood to have been restricted by the limitations caused by coercive control and inequitable state responses to the offender which reduced their available choices. Further research would be useful to explore how or whether the social entrapment approach would assist sentencers in applying coercive control as mitigation.

5. COERCIVE CONTROL AS MITIGATION IN CURRENT SENTENCING GUIDELINES

The inclusion of the 'coercion, intimidation or exploitation' mitigation factor in the Sentencing Council's General guideline does provide a basis for domestic abuse / coercive control to be taken into consideration at the sentencing stage. It therefore accepts that the offender's culpability is reduced where the crime is committed as a consequence of such abuse. However, two issues concerning consistency in decision-making arise: (i) both the sentencer and probation officer need to be able to recognise coercive control and the guideline does not assist in that matter; (ii) sentencing determinations could differ where 'coercion' is considered under an offence-specific guideline as a lower culpability factor rather than as a personal mitigation factor as prescribed by the Sentencing Council's General guideline.

An inconsistent approach would be problematic given the challenges to disclosing their experiences of domestic abuse that offenders have. If they perceive that there is little benefit to disclosing, the weight of their concerns such as losing access to their children, stigmatisation and not being believed will ensure their continued silence.

1. Identification of domestic abuse / coercive control

There are concerns that coercive control is under recognised in the criminal justice system and certainly the underuse of the controlling or coercive behaviour offence under section 76 of the

Serious Crime Act 2015 supports this view (Myhill et al., 2022). Despite the offence originally being conceived as addressing the gap in law by recognising non-physical emotional abuse (Wiener, 2020), in practice there has been a continued focus on physical harms (Robinson et al., 2018). Where police officers have utilised the offence, they can be frustrated by the volume of evidence the case requires and the low sentences that result (Bettinson et al., 2024b). When applying the 'coercion, intimidation or exploitation' factor either in terms of culpability or mitigation it is imperative that sentencers are trained to recognise domestic abuse / coercive control. Bettinson et al., (2024b) conducted interviews with criminal justice professionals, including magistrates, to explore their understanding of coercive control. As the majority of criminal offences are tried and sentenced at the magistrates' courts, the study provides useful insights about magistrates' ability to recognise coercive control when sentencing, although they were not explicitly asked about their role as sentencers for the study. The researchers found that the magistrates had limited training on coercive control, including those who sat in the Specialist Domestic Abuse Court. One magistrate said, 'I think there would be quite a large swathe of magistrates who would struggle to articulate what [coercive control] was from any kind of knowledge base, rather than just in their head' (Bettinson et al., 2024b, p. 9). More positively, recognition was expressed by another that the definition of domestic abuse had changed magistrates' understanding: 'The definitions are no longer just, you've hit someone... it's all of the other areas as well. So, the legislation has changed, so we have to change with it' (Bettinson et al., 2024b, p. 10).

These quotations reflect responses to questions about the section 76 offence, and indicate that its introduction has generated an appreciation, amongst criminal justice professionals, that non-physical forms of abuse are criminal behaviours. However, the authors of the study, in another paper (Munro et al., 2024) also explored criminal justice professionals' experiences of responding to defendants where the controlling circumstances prompted them to commit offences themselves. Some responses from magistrates suggest that reduction of culpability would be contingent on the perceived severity of the threat that the abuser posed to the victim-offender. For example, one magistrate said, 'I think we'd probably have less sympathy for [coercive control] than we would the more serious side of things,' the implication being that a defendant facing a threat of physical harm would be treated more sympathetically than non-physical forms of domestic abuse (Munro et al., 2024, p. 407). Another reflected on the respectability of a female offender, in court for theft offences: 'I suddenly realised this was a middle-class woman who had just hit really bad times... she was a criminal because she committed offences, but she wasn't a criminal: that wasn't her nature, but she'd been forced into it by her circumstances' (Munro et al., 2024, p. 407). As the authors note, it is unclear whether that magistrate would have held the same sympathy for the majority of female offenders with experience of social exclusion alongside their histories of domestic abuse.

Sentencing at the magistrates' courts has the greatest impact on female offenders, whose crimes are generally less serious than their male counterparts, and where cases are dealt with very quickly. The Sentencing Council's General guideline advises that where there is 'involvement through coercion, intimidation or exploitation' a pre-sentence report (PSR) should be prepared. Research by Robinson (2022) has found that there has been a shift away from written PSRs towards the adoption of oral reports for efficiency purposes, particularly in the magistrates' courts (Centre for Justice Innovation, 2018; du Mont and Redgrave, 2017). Robinson concludes that the push for speedier

processes in the criminal justice system may mean that fewer requests are made for PSRs and potentially a reduction in the quality of the information provided in them for sentencing decision-makers. This means that there is little opportunity for the offender to disclose the abuse at this point and for it to be part of the sentencing judge's consideration. Consequently, the Centre for Women's Justice argue for training on domestic abuse and its impact at all levels of the criminal justice system including the Probation Service (Swaine Williams, 2024). In addition, they advocate for criminal justice professionals, including sentencers and probation officers to have access to the necessary guidance, tools and expertise to enable them to take proper account of the abuse suffered by the victim-offender and its relationship to their offending.

Currently, there is no framework in the Sentencing Council's General guideline that assists sentencers with the process of identifying domestic abuse / coercive control. They ought to have regard to the Domestic Abuse Act 2021 (sections 1-3), however, these provisions do not provide any indication as to the context of any reduced culpability that applies to victims who commit crimes as a consequence of their experiences of abuse.

2. Coercion to determine culpability threshold or as a personal mitigation factor

Recognition of reduced culpability for victim-offenders whose crimes result from domestic abuse / coercive control experiences by sentencing decision-makers requires criminal justice professionals to have the expertise, time, resources, and tools to identify the abuse. Once the abuse is recognised, sentencers should apply a consistent approach to determining the extent the victim-offender's culpability is reduced. In this regard, existing sentencing guidelines potentially impede consistency as 'involvement through coercion, intimidation or exploitation' appears in some offence-specific sentencing guidelines as a factor that determines the culpability threshold (e.g. the guideline for benefit fraud (2014)), in others as a factor to consider under personal mitigation (e.g. the guideline for collection of terrorist information (2022)) or is not listed at all (e.g. the guideline for abuse of position of trust: sexual activity in the presence of a child (2014)). Where this factor is not listed in a relevant offence guideline, the General guideline applies, and the coercion factor is to be considered as personal mitigation.

In reaching a provisional sentence, the sentencing court first considers the culpability of the offender and the harm caused by the offending.⁴ Personal mitigation is then taken into account either to the extent it reduces the seriousness of the offence or reflects personal mitigation. Where coercion is relevant to the culpability threshold in reaching a provisional sentence, it would seem that greater significance is placed on the victim-offender's experience of domestic abuse and coercive control than when it is addressed under personal mitigation.

Where 'coercion' does appear as a culpability threshold factor in offence specific guidelines it does so in the lesser category of culpability. For example, the benefit fraud guideline (2014) includes 'involvement through coercion, intimidation or exploitation' as category C culpability. No distinction is made between domestic abuse / coercive control or other forms of coercion and courts may fail

4 Section 63 of the Sentencing Act 2020.

to take into account non-physical forms of coercive control that are criminalised under section 76 of the Serious Crime Act 2015. Whilst there is a failure to reference domestic abuse / coercive control specifically in relation to culpability thresholds in some offence-specific guidelines, there are exceptions such as the guideline for causing or allowing a child to suffer serious physical harm / or to die (2023). This guideline notes that where the ‘offender is a victim of domestic abuse, including coercion and/or intimidation (where linked to the commission of the offence)’ they meet the category D threshold reflecting lesser culpability. This variation in approach is likely to create inconsistency in sentencing decisions, particularly when calculating the relevance of domestic abuse / coercive control for the purposes of the culpability threshold.

The potential for inconsistency may be minimised should the sentencer refer to the Sentencing Council’s General guideline. The guidance notes that involvement in an offence ‘through coercion, intimidation or exploitation’ is to be considered where the offender has been a victim of domestic abuse. However, there is no clear indication that the context of domestic abuse is taken into account when determining the applicable culpability threshold as the General guideline considers ‘coercion’ as personal mitigation and not as a culpability threshold factor. Given that a person who is subject to domestic abuse / coercive control will often be subject to their abuser’s demands or driven by the abuse to react to it, it is difficult to see how the person’s culpability varies in this context – it is based on being subject to the abuse. As domestic abuse / coercive control is considered within some sentencing guidelines there is an acceptance it is a factor that does reduce culpability and it is questionable why a domestic abuse / coercion factor is not applicable across all offences in the same way. Further research would be useful to determine whether there is a difference in how the coercion factor is applied by sentencers as a personal mitigation factor or as a culpability factor.

6. PROPOSALS FOR FURTHER RESEARCH

The ‘coercion, intimidation and exploitation’ mitigation factor and sentencing of coerced and controlled victim-offenders has received no research attention in England and Wales. The following subsections draw attention to the areas where research is required in order to gain a more detailed picture of the position of coercive control as mitigation at sentencing.

1. Criminal justice professionals’ understanding of coercive control and its impact on offending

Current research about criminal justice professionals’ understanding of coercive control have focused for the most part on policing the controlling and coercive behaviour offence under section 76 of the Serious Crime Act 2015 (Barlow et al., 2020; Myhill et al., 2022). There is a paucity of research that focuses on the understanding of coercive control held by sentencers and probation officers. This gap means that it is unclear whether sentencing courts appreciate the significant consequences their decisions have for offenders whose crimes flow from their experiences of coercive control in their intimate or family relationships. For women, these consequences will have

a bearing on their reoffending where they are at risk of homelessness following a short custodial sentence and 'decide' to return to an abusive partner, becoming vulnerable to coerced and controlled reoffending. Likewise, complying with supervision orders become difficult under the demands of the abuser.

Given the significance of sentencing victim-offenders and the potential for reoffending as a result of sentencing decisions, further research would assist in determining how much adherence to the Domestic Abuse Act's statutory guidance there is at sentencing. This ought to include exploration of both probation officers who produce PSRs for the courts and the judiciary themselves and inform future policy reforms.

2. Prevalence of male offending stemming from coercive control

Domestic abuse and coercive control disproportionately effect women compared with men and this gendered nature of the abuse explains why research to date has focused on women and women offenders. However, there are men, albeit fewer in number and with different impacts upon them, who are victims of domestic abuse / coercive control. There is no research about the role coercive control plays in male offending and should it be a relevant factor in male offending, opportunities may be missed to take coercive control into account as mitigation at sentencing and to provide appropriate support to the offender.

3. Consistent application of coercive control as mitigation at sentencing

While the sentencing guidelines accept that the context of domestic abuse and coercion does reduce culpability, little is known about how this factor is applied by a sentencing court and the consistency of its application. Coercive control itself is not specified in the language of the guidelines and a reference to 'coercion or intimidation' may mean that sentencers focus on physical coercion and not all the forms coercive control can take. Given the introduction of a legal definition of domestic abuse that includes coercive and controlling behaviours in the Domestic Abuse Act 2021, research would help to identify whether the sentencing guidelines should clearly direct sentencers to the statutory guidance governing the Domestic Abuse Act 2021.

Research would also identify whether the structure of existing sentencing guidelines encourage a consistent approach to sentencing victim-offenders who have been coerced and controlled into committing crimes. Guidelines currently allow considerable scope for variation given that coercive control is not explicitly included and can be assessed either in relation to the culpability threshold or as personal mitigation. Improving our understanding of these issues could help to develop further guidance to support sentencers in reaching an appropriate sentence for the abused offender.

7. CONCLUSION

A link between women's offending and domestic abuse / coercive control exists, and the sentencing guidelines accept that culpability is lowered where the victim-offender's crime was committed in this context. The extent that coercive control is taken into account as mitigation at sentencing is however unclear, as the language of the guidelines do not specify 'coercive control' as a mitigating factor, but instead uses the term 'coercion' that may occur in a domestically abusive relationship. Women face many barriers to disclosing their experiences of domestic abuse in the criminal justice system which are outlined in the Centre for Women's Justice report 'Double Standard: Ending the unjust criminalisation of victims of violence against women and girls'. Sentencing is an opportunity for the criminal justice system to demonstrate that there is a benefit to disclosing a background of domestic abuse / coercive control, encouraging women's voices to be heard and disrupting pathways into future coerced and controlled reoffending. Achieving this will require a consistent approach to assessing coercive control as mitigation at sentencing and future research would indicate the extent to which this occurs.

REFERENCES

- Baldwin, L. and Abbott, L. (2023) *Pregnancy and New Motherhood in Prison*. Bristol University Press.
- Barlow, C. (2016) *Women as Co-offenders: Pathways into Crime*. Bristol: Policy Press.
- Barlow, C. (2023) 'They Just Didn't Want to Help Me': The Criminalisation of Coerced Women Co-offenders' in L. Baldwin (ed.) *Gendered Justice: Women, Trauma and Crime*. Hook: Waterside Press.
- Barlow, C., Johnson, K., Walklate, S. and Humphries, L. (2020) 'Putting coercive control into practice: problems and possibilities', *British Journal of Criminology*, 60(1): 160-179.
- Bettinson, V., Munro, V.E. and Wake, N. (2024a) 'A One Sided-Coin? Attributing Agency and Responsibility in Contexts of Coercive Control' in M. Bone, J.J. Child and J. Rogers (eds.) *Criminal Law Reform Now Volume 2: Proposals and Critique*. London: Bloomsbury Publishing.
- Bettinson, V., Burton, M. and Munro, V.E. (2024b) 'Going for Gold: Professionals' Perspectives on the Design and Implementation of Transformative Coercive Control Offences in Scotland and England and Wales', *Criminology and Criminal Justice* (forthcoming).
- Bettinson, V. and Wake, N. (2024) 'A New Self-defence Framework for Domestic Abuse Survivors Who Use Violent Resistance in Response', *Modern Law Review*, 87(1): 141-171.
- Centre for Justice Innovation (2018) *Renewing Trust: How can we improve the relationship between probation and the courts*. London: Centre for Justice Innovation.
- Centre for Women's Justice (2022) *Double Standard: Ending the unjust criminalisation of victims of violence against women and girls*. London: Centre for Women's Justice.
- Dichter, M.E., Thomas, K.A., Crits-Christoph, P., Ogden, S.N. and Rhodes, K.V. (2018) 'Coercive Control in intimate partner violence: Relationship with women's experiences of violence, use of violence, and danger', *Psychology of Violence*, 8(5): 596.
- Donovan, C. and Barnes, R. (2020) *Queering narratives of domestic violence and abuse: Victims and/or perpetrators?* Springer International Publishing.
- Douglas, H., Tarrant, S. and Tolmie, J. (2021) 'Social entrapment evidence: understanding its role in self-defence cases involving intimate partner violence', *University of New South Wales Law Journal*, 44(1): 326.
- du Mont, S and Redgrave, H. (2017) *Where Did It All Go Wrong? A study into the use of community sentences in England and Wales*. London: Crest Advisory.
- Dutton, D. and Painter, S.L. (1981) 'Victimology: An international journal', *Victimology*, 6(1-4): 139-155.
- Edwards, S.M. (2022) "'Demasculinising" the Defences of Self-Defence, the "Householder Defence" and Duress', *Criminal Law Review*, 111-129.
- Fleetwood, J. (2015) 'A Narrative Approach to Women's Lawbreaking', *Feminist Criminology*, 10(4): 368-388.
- Gadd, D., Farrall, S., Dallimore, D. and Lombard, N. (2003) 'Equal victims or the usual suspects? Making sense of domestic abuse against men', *International Review of Victimology*, 10(2): 95-116.
- Hamby, S.L. (2014) *Battered Women's Protective Strategies*. New York: Oxford University Press.
- Harris, L. and Hodges, K. (2019) 'Responding to complexity: improving service provision for survivors of domestic abuse with 'complex needs'', *Journal of Gender-Based Violence*, 3(2): 167-184.
- Herring, J. (2007) 'Familial homicide, failure to protect and domestic violence: Who's the victim?', *Criminal Law Review*, 923-933.
- HM Government (2018) *Transforming the Response to Domestic Abuse: Consultation*. London: Home Office / Ministry of Justice.
- Home Office (2013) *Information for Local areas on the Change to the Definition of Domestic Violence and Abuse*. London: Home Office.
- Home Office (2022) *Domestic Abuse Statutory Guidance*. London: Home Office.
- Howes, S.K., Swaine Williams, K. and Wistrich, H. (2021) 'Women who kill: why self-defence rarely works for women who kill their abuser', *Criminal Law Review*, 945-957.
- Klaver, J.R, Zina, L. and Gordon Rose, V. (2008) 'Effects of Personality, Interrogation Techniques and Plausibility in an Experimental False Confession Paradigm', *Legal and Criminological Psychology*, 13(1): 71-88.
- Ministry of Justice (2023a) *Domestic Homicide Sentencing Review: Independent Review by Clare Wade KC*. London: Ministry of Justice.
- Ministry of Justice (2023b) *Domestic Homicide Sentencing Review: Government Response to the Independent Review by Clare Wade KC*. London: Ministry of Justice.
- Munro, V.E. and Aitken, R. (2018) 'Adding insult to injury? The criminal law's response to domestic abuse-related suicide in England and Wales', *Criminal Law Review*, 732-741.
- Munro, V.E., Bettinson, V. and Burton, M. (2024) 'Coercion, Control and Criminal Responsibility: Exploring Professional Responses to Offending and Suicidality in the Context of Domestically Abusive Relationships', *Social & Legal Studies*, 33(3): 392-419.
- Muslim Hands (2018) *(In)visibility: Female. Muslim. Imprisoned*. London: Muslim Hands.
- Myhill, A., Johnson, K., McNeil, A., Critchfield, E. and Westmarland, N. (2022) 'A genuine one usually sticks out a mile': policing coercive control in England and Wales', *Policing*

& Society. Published online 18 October 2022.

ONS (2020) *Domestic abuse and the criminal justice system, England and Wales: November 2020*. London: Office for National Statistics.

Prison Reform Trust (2017) *“There’s a reason we’re in trouble” Domestic abuse as a driver to women’s offending*. London: Prison Reform Trust.

Roberts, J. (2015) *‘It was do or die’—How a woman’s experience of domestic abuse can influence her involvement in crime: A qualitative investigation of the experiences of community-based female offenders*. Doctoral dissertation, University of Leicester.

Robinson, G. (2022) *Pre-Sentence Reports: A review of policy, practice and research*. London: Sentencing Academy.

Sharp-Jeffs, N., Kelly, L. and Klein, R. (2018) ‘Long journeys towards freedom: the relationship between coercive control and space for action’, *Violence Against Women*, 24(2): 163-185.

Stark, E. (2007) *Coercive Control: How Men Entrap Women in Personal Life*. New York: Oxford University Press.

Swaine Williams, K. (2024) ‘Court proceedings in which victims of domestic abuse are accused of offending’ in M. Burton, V. Bettinson, K. Richardson and A. Speed (eds.) *Research Handbook on Domestic Violence and Abuse*. Elgar (forthcoming).

Tolmie, J., Smith, R., Short, J. and Wilson, D. (2018) ‘Social entrapment: a realistic understanding of the criminal offending of primary victims of Intimate Partner Violence’, *New Zealand Law Review*, 2: 181.

Vickers, S. and Wilcox, P. (2011) ‘Abuse, Women and the Criminal Justice System’, *Criminal Justice Matters*, 85(1): 24-25.

Wiener, C. (2024) ‘Defining Coercive Control in Law: Problems and Possibilities’ in M. Burton, V. Bettinson, K. Richardson and A. Speed (eds) *Research Handbook on Domestic Violence and Abuse*. Elgar (forthcoming).