“A genuine one usually sticks out a mile”: Policing coercive control in England and Wales

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In 2015, legislation was enacted in England and Wales to criminalise coercive control. While there has been considerable debate on the merits of the law, there has been little empirical study of its use in practice. This paper presents findings from a focused ethnography conducted in two police forces in England. Field observations with first response officers and specialist investigators reveal structural and social-cultural contexts that mitigate against successful implementation of the law. Specifically, we identify officer knowledge and attitudes, resourcing and the framing of the legislation itself as impeding its wider use. While we did not observe the unintended consequences feared by some observers, we conclude that systemic change is required if the theoretical benefits of the legislation are to be fully realised.

Introduction

Feminist activists and scholars have long been critical of how the criminal law frequently fails to provide protection for victims of domestic abuse. Laws criminalising physical assault, developed historically to address one-off acts of violence between men in public spaces, have not been found to transfer adequately to the multi-faceted abuse experienced by those victimised, mostly in the private sphere, by intimate partners. Such abuse may be repeated physical or sexual assaults, threats, or damage to property, but also continuous non-physical coercion that falls outside traditional crime codes altogether.

In England and Wales, pressure from activists, national charities and support services, and a highly critical report on police response to domestic abuse by the police inspectorate, led, in 2014, to a government consultation on 'strengthening the law' on domestic abuse. This consultation explicitly acknowledged the under-recognised but 'devastating' impact of coercive and controlling behaviour on victims (Home Office 2014a, p.3). Responses to the consultation were published in December 2014; 85% of respondents felt that the current law did not provide adequate protection for victims of domestic abuse, while 55% supported a new offence that 'captures patterns of coercive and controlling behaviour in a relationship' (Home Office 2014b, p.7). Accordingly, provision for a law criminalising coercive control was introduced to the Serious Crime Bill, and was enacted on December 28th, 2015 as Section 76 of the Serious Crime Act 2015. Section 76 states that a

person commits an offence if they 'repeatedly or continuously engage in behaviour towards another person that is controlling or coercive' and that behaviour has a 'serious effect' on that person. Serious effect is defined as 'fear, on at least two occasions, that violence will be used' or 'serious alarm or distress which has a substantial adverse effect on [a victim's] usual day-to-day activities'[1]. Victim and perpetrator must also be 'personally connected' – either in an intimate relationship, or ex-partners or family members residing at the same address. The Domestic Abuse Act 2021 extended the scope of the legislation to apply also to non-resident ex-partners. The maximum punishment for conviction on indictment is five years imprisonment.

This paper charts the increased prominence of coercive control in policy and practice in the UK and summarises theoretical positions both for and against the Section 76 legislation. We then present findings from ethnographic research to illuminate police understanding of and response to coercive control in two English police forces. We suggest that current legislative, structural and social-cultural contexts are not enabling successful operationalisation of the coercive control offence. We conclude by discussing the implications of our findings for current international debates relating to the criminalisation of coercive control, and for future review of domestic legislation.

The rise of coercive control

The concept of coercive control is not new, and in fact pre-dates scholarly investigation of violence and abuse in intimate relationships (Okun 1986). In its widest sense, it is 'an authoritarian strategy in which non-reciprocal constraints on rights and liberties, deprivations and punishments are used to exact compliance/dependence' (Stark 2017, p.21). While coercive control has been central to feminist-activist conceptualisations of domestic abuse since the 1970s (see Dobash and Dobash 1979), it has only come to prominence relatively recently in UK national policy relating to domestic abuse.

The theory of coercive control has been articulated comprehensively elsewhere (Stark 2007). Briefly, its proponents point to a 'growing international consensus that 'gender [based] violence' be defined … as a violation of human rights' (Stark 2017, p.15). It is understood to operate most often through existing gendered power imbalances, with the effect of constraining the liberty and autonomy of its victims who are primarily women (Stark 2012). A further defining characteristic of coercive control is the multiple tactics and behaviours employed by abusers to exert control over victims. A core of non-physically coercive tactics – emotional abuse, isolation from family and friends, economic abuse, and so on – is reinforced by the actual or threatened use of

physical and sexual violence and coercion. Crucially, victims tend to perceive their abuse as cumulative and continuous, and Stark (2012, 2017) suggests physical assaults are often 'minor' but frequent, as opposed to severe and resulting in serious injury.

This lived experience of domestic abuse is at odds with a traditional criminal justice response focused on discrete, time bound acts of criminality. Tuerkheimer (2004, p.960-961) suggested that '[p]remised on a transactional model of crime that isolates and decontextualizes violence, the law applied to domestic abuse conceals the reality of an ongoing pattern of conduct occurring within a relationship characterized by power and control'. Stark (2017) refers to this response as the 'assault model', which he argues fails to capture both the course of abusive conduct and the cumulative harm of ongoing abuse. In other words, 'the totality and meaning of the perpetrator's behaviour … and the weight of harm experienced by the victim are all potentially misunderstood and minimized at every stage of the criminal justice process' (Tolmie 2018, p.51-52). Section 76 was an attempt to address these limitations by creating an offence that spoke directly to the impact of abuse on victims' freedom and autonomy. However, translating survivors' experiences into law is 'fraught with difficulties' (Walklate *et al*. 2018, p.118), and Section 76 prompted strong opinions, both for and against.

Section 76: Arguments for and against

Proponents of the legislation suggested numerous potential benefits, but primarily its capacity to reflect better the lived experiences of victim-survivors. Youngs (2015) suggested the offence satisfies the principle of 'fair labelling' and provides a symbolic and educative function by communicating both the gravity and continuous nature of the abuse. Additionally, victims may feel validated and more confident in disclosing if they can recognise their experiences in the law.

The law may also make the 'broader context of the relationship' relevant evidentially (Bettinson and Bishop 2015, p.191), thus addressing the perceived weaknesses of the assault model; the offence criminalises abusive behaviour that previously fell outside existing crime codes, and permits the full range of abuse to be brought before a court (as opposed to only the most recent discrete criminal act). Tuerkheimer illustrates that absenting the broader context from physical assaults, for example, can have the effect of obscuring the perpetrator's motive, and can also undermine the victim's credibility, as the story presented does not represent her 'reality' (2004, p.983). Further, Wangmann (2020) suggests the assault model validates the way in which men talk about their abuse: as one-off incidents, prompted by a loss of control, perhaps associated

with alcohol or some perceived provocation from the victim. It obscures what is in reality a 'complex pattern of control' (Tuerkheimer 2004, p.986).

It is worth noting, however, that support for Section 76 was not unanimous, even among feminist advocates, national charities and the specialist support sector[2,3]. A number of prominent academics were also critical of the new offence, or held reservations. Hamilton (2020, p.200-208) argued the offence was 'a case study on overcriminalisation' citing concerns about the open-ended nature of the legislation and questioning whether people are unilaterally unable to consent to their partner controlling aspects of their life (see also Walklate and Fitz-Gibbon 2019).

Other scholars stopped short of such fundamental criticism but highlighted potential unintended consequences and problems with implementing the legislation in practice, arguing any benefits of the offence must be considered against costs to victims and society. Firstly, it was suggested police officers may find it difficult to identify non-physically coercive behaviours that may be subtle and exploit characteristics that are specific to the victim, and to operationalise emotional harm (Burman and Brooks-Hay 2018). Precisely because coercive control operates primarily through sexual inequality and established gender norms, behaviours that may ultimately be regarded as reaching an abusive threshold (jealousy, for example) may be present to some extent in many healthy, non-abusive relationships. The issue becomes, then, if coercive control 'blurs the line between criminal and non-criminal behaviour [and] exploits existing gender norms, when does 'normal' end and 'abuse' begin?' (Tolmie 2018, p.56; see also Walklate *et al*. 2018).

Some expressed concern the legislation specified a relatively 'low bar' (Burman and Brooks-Hay 2018, p.77) to establishing repeated abuse, which could result in the criminalisation of women for 'fighting back' and increases in 'vexatious' complaints from manipulative primary perpetrators. Thus, further avenues for 'legal systems abuse' may be opened for perpetrators if, for example, a victim attempted to protect her children by restricting their contact with her abuser (Burman and Brooks-Hay 2018; see also Tolmie 2018, Walklate *et al*. 2018, Wangmann 2020).

Commentators also pointed to potential difficulties with evidencing the offence. Tolmie (2018, p.54) suggested that because coercive control involves 'an individualised package of behaviours' evidencing its impact requires sophisticated recognition of 'not only what the abusive partner has done, but what the victim has been prevented from doing'. This analysis requires 'a sensitivity to gender roles' possibly at odds with existing (unconscious) conceptual frameworks held by police and prosecutors. Indeed, many stress that, if the

new offence is to be effective, wider, systemic change is required which advances understanding of the dynamics of domestic abuse (Barlow *et al*. 2020, Bishop and Bettinson 2018, Brennan *et al*. 2019, Burman and Brooks-Hay 2018, Walklate *et al*. 2018, Wangmann 2020). Crucially, if such barriers to prosecuting the offence were borne out, the effect would be to make it appear that there is in fact relatively little coercive control – the opposite of validating victims' experiences (Tolmie 2018).

Finally, critics suggested the coercive control legislation may distract police and prosecutors from pursuing robustly existing laws such as assault and breaches of protective orders and create (further) difficulties around which charges to lay (Walklate *et al*. 2018). Specifically, Tolmie (2018) questioned whether the law may encourage the police not to pursue discrete physical assaults, even those that are (injuriously) 'serious', in favour of waiting to establish a course of conduct.

Criminalising coercive control: Implications for policing

At the time, the Solicitor General described Parliamentary committee discussions relating to introducing an offence of coercive control as 'probably one of the most significant debates we have had'[4]. He was pressed on a number of issues, including the preparedness of the police and wider criminal justice system, responding that 'the training of police, prosecutors and judges … is vital', and that 'any commencements of the provisions' should be 'consistent with proper training'[5]. A suggestion that all police officers be required to have 'appropriate training in domestic violence behaviours' prior to enactment of the law was rejected, however, in favour of a government clause permitting the Secretary of State to issue guidance. A 'Statutory Guidance Framework' (Home Office 2015) was subsequently published and focused on identifying the behaviours associated with domestic abuse and coercive control, the circumstances in which the new offence might apply, and gathering evidence.

Though there was an expectation from the Home Secretary that police officers be trained prior to the enactment of the law[6], forces cannot be mandated to implement training in the absence of a statutory provision. The College of Policing produced, in advance of the offence being enacted, both a short e-learning package and a pared down version of its flagship 'Domestic Abuse Matters' training. It is not known how many forces, or officers, completed these training packages, but uptake is likely to have been patchy[7].

An impact assessment[8] attempted to assess the financial implications for policing of the new law in terms of increased reporting and investigations. The assessment used the responses of 96 victim-survivors to

the original consultation (concerning reporting intentions), alongside police recorded crimes of harassment and an estimate of 7.5 hours of officer time per investigation, to calculate a 'best estimate' of £2,230,000 as the annual cost to policing. The assessment acknowledged 'a range of uncertainty' around the estimate, and that there would be additional 'transition costs', including for training, which were not costed in the assessment.

The above summary is intended to show simply that, in common with much legislation, Section 76 was introduced with uncertain assumptions and in advance of any significant practical preparation for policing. It was largely for the police service, and individual forces, to address training, culture change, resourcing and other issues that may affect implementation of the new law.

Empirical study of the Section 76 legislation

The literature surrounding the criminalisation of coercive control has thus far been largely theoretical. Few studies have addressed the implementation or impact of the legislation. Brennan *et al*. (2019) conducted semi-structured interviews with respondents from a range of agencies involved in addressing domestic abuse, including police. They found frontline services 'lacked appreciation of the power dynamics inherent in controlling relationships' and that this lack of understanding and 'traditional focus on physical evidence' likely resulted in underutilisation of the powers granted under Section 76 (Brennan *et al*. 2019, p.635-641).

McGorrery and McMahon (2019) reviewed media reports of successful prosecutions under Section 76 up to April 2018 and found no evidence for either vexatious use of the law, or the 'low bar' hypothesis. Rather, based on the cases reported, they argued the police and/or prosecutors had adopted a 'high hurdle … approach to prosecuting cases involving extreme behaviours, physical violence and/or considerable corroboratory evidence' (2019, p.14). They also found the vast majority of cases involved physical assaults alongside non-physical coercion.

Barlow *et al*. (2020) conducted an analysis of police administrative data in one English force and found that, by June 2017, less than 1% of domestic abuse crimes were recorded as controlling or coercive behaviour. Case file analysis for crimes of assault occasioning actual bodily harm suggested 87% of cases involving intimate partners could or should have been recorded as coercive control, based on victim/witness statements and previous reports detailing repeat victimisation. Moreover, while coercive control cases were more likely to be assessed as 'high risk', they were less likely than other crime types to result in an arrest, or

prosecution. Officers suggested coercive control was difficult to evidence, and there were examples of case files submitted to prosecutors requiring further evidence or investigation, or not meeting the required evidential threshold. Barlow *et al*. concluded the coercive control law provided officers with the means to respond robustly to ongoing domestic abuse where previously they would have been unable, but that it was presently 'both underused and under-recorded' (2020, p.174).

Barlow and Whittle (2019), in another English force, similarly found that coercive control crimes were more likely to be assessed as high risk, but less likely to result in arrest or prosecution. Officer interviews demonstrated an over-focus on physical violence, with some participants suggesting pursuing a physical assault was a 'quick win', whereas coercive control was seen as 'subjective' and more difficult to evidence. Weiner (2017, p.505), using officer interviews and focus groups, also found that taking a statement for coercive control as opposed to a discrete incident was commonly perceived as challenging, and many saw coercive control as a 'grey area'.

Analysis of national data supports the above concerns. Although forces have recorded greater numbers of crimes each year since the legislation was introduced, in 2018/2019 controlling and coercive behaviour constituted only 2.5% of all domestic abuse crime in England and Wales. Additionally, the proportion of coercive control cases resulting in a charge or summons has fallen year on year to less than 6%, and they are more likely than other domestic abuse cases to be closed due to evidential difficulties (Brennan and Myhill 2021).

The Home Office conducted a review of the Section 76 legislation drawing on the aforementioned literature, as well as a 'stakeholder engagement' exercise. The review concluded that, while the offence constitutes an improved legal framework, there is likely to be 'significant room for improvement' in identifying and evidencing coercive control (Home Office 2021, p.5). The review recommended 'further research be undertaken … to assess the current levels of awareness and understanding of the legislation, and its application in practice' (Home Office 2021, p.7). McGorrery and McMahon (2019, p.15) also concluded '[t]he next step in researching this phenomenon is the investigation of primary data'. The present study employs focused ethnography to examine police responses to domestic abuse, with a particular focus on officers' experiences of working with the coercive control legislation. It is the first to use observational methods to examine how a coercive control law is translated into practice, and as such goes beyond (retrospective) in-depth interviews and secondary analysis of administrative data. It is thus a unique contribution to the fledgling

literature on the operationalisation of this ground-breaking legislation, and as such will be of immediate relevance to policy-makers and practitioners, both in the UK and internationally.

Data and method

Observational methods were chosen for this study, as the aim was to explore how the coercive control law was understood and experienced in everyday police practice (see for example Crang and Cook 2007). Data were collected as part of a 'focused ethnography', a method which differs from more traditional ethnography in that it commonly involves shorter-term field observations, focused research questions, and some prior knowledge of the subject of interest (Wall 2015).

Research sites

The research took place in two police forces in England, selected primarily for their accessibility to the researchers. Force 1 was a medium-sized force in the south, serving an ethnically diverse population of over one million and with a mixture of urban and rural areas. Force 2 was a smaller force in the north. Although larger geographically, it serves a population around half the size of Force 1, with fewer urban centres but greater overall levels of poverty. In both forces, domestic abuse accounted for around 8% of recorded crimes, consistent with national averages (HMIC, 2014). Between the enactment of Section 76 and the data collection period, both forces implemented training on domestic abuse with a focus in part on coercive control. Both forces had specialist units responsible for investigating and safeguarding in cases of domestic abuse. First response teams were also observed, with all research access facilitated by force 'gatekeepers' (Inspectors and Chief Inspectors).

Fieldwork

Fieldwork took the form of the 'go-along' (Kusenbach 2003, p.455) where researchers accompanied officers on their normal duties while observing, asking questions and conducting short ethnographic interviews. The go-along is thus a 'modest but systematic' version of the deep 'hanging out' in classical ethnography (Kusenbach 2003, p.463).

Fieldwork across both forces took place in two tranches, in mid-2019 and early 2020 (prior to the pandemic). In total, 44 shifts were observed across the two forces (31 first response and 13 domestic abuse

investigation), totalling approximately 350 hours of observation. In the field, researchers took scratch notes or 'jottings' (Emerson *et al*. 1995), using notepads or smartphones, at times when it was possible to do so. Full fieldnotes were written as soon as possible following the shift, generally within 24-48 hours.

Ethics and informed consent

The project received ethical approval from XXXX University. Due to the dynamic nature of observations, there are recognised difficulties with obtaining formal informed consent from everybody encountered in a field setting (see Rowe 2007). 'Institutional consent' for the research was obtained from chief officers in both forces, and participant information, including the voluntary terms of consent, was shared among officers via email and posters in police stations. Researchers sought individual verbal consent from response officers and investigators to accompany them and observe. Verbal consent for researchers' presence was also sought, generally by officers, from members of the public such as victims, suspects and solicitors, but with researchers providing additional information where required. No officer, victim or suspect in either site indicated they were not willing for a researcher to be present during an encounter. Very few if any officers appeared concerned by the nature of the research; several first response officers stated they frequently have 'ride-alongs', for example with other professionals or potential recruits, and are consequently used to being accompanied.

Researchers took the role of 'observer as participant' (McNaughton Nicholls *et al*. 2014, p.247). The focused nature of the fieldwork did not permit strong or especially familiar relationships to be developed with participants. While some ethnographers (see for example Rowe 2007) have suggested regular, intensive and personal interaction with subjects is required to generate trust and acceptance, this was not our experience. We found the vast majority of officers to be friendly, accommodating, and open to our research and questions (in contrast to Cox 2020).

Data coding and analysis

Once data collection was complete, anonymised fieldnotes were exported into NVivo, a qualitative data analysis software programme. The data were coded across the research team iteratively, using the principles of grounded theory (see Charmaz 2014). Coding involved the identification of initial themes, conducted independently by team members, which were then examined and synthesised to develop an agreed coding

system. In keeping with the 'non-linear' nature of grounded inquiry (Charmaz 2014), further themes and codes were identified and refined as analysis progressed. In the following sections, we cite directly from our fieldnotes to outline the key, interconnecting legislative, structural and social-cultural factors identified as impeding the uptake of the Section 76 offence, followed by a discussion of implications.

Findings

The researchers interrogated the data for differences between the research sites. The analysis revealed, however, similar and consistent themes and so findings are presented as reflective of both sites.

Legislation

In parallel with critiques of the coercive control law made elsewhere[9], we identified aspects of the legislation that impeded its effective operationalisation in practice. Particularly, researchers observed several cases that seemingly involved typical elements of coercive control but where the relationship had 'ended' and victim and suspect were no longer co-habiting, meaning the legislation could not be applied (the fieldwork preceded the change to the definition of 'personally connected' applied to Section 76 by Section 68 of the Domestic Abuse Act 2021). One such case involved a woman who had been hiding inside a public building after hours; staff had contacted police due to the woman's ex-partner having tried to enter the building, and her consequent level of fear. The woman disclosed she had visited the man recently to retrieve property and, while she hated her abuser, described their relationship as 'complicated'.

> Following completion of the risk assessment, the officer went to seek advice from the Sergeant about what crime it might be possible to record ... The focus was very much on what had happened that day at the [public building], and the general conclusion seemed to be that it would be hard to make out a specific offence. (First response)

This example speaks to the way in which the Section 76 legislation, in its original form, created a (false) dichotomy between coercive control and stalking. It exemplifies that in many cases of domestic abuse there is not a clean break in the relationship between victim and perpetrator. Victims may return to or engage with the perpetrator for any number of reasons, including coercion and fear, but also practical difficulties associated with living independently (such as housing and economic resources), and in a bid to (safely) manage child

contact. It was also clear from speaking with officers that some felt disconnect between what they regarded as (post-separation) controlling and coercive behaviour and the scope of the legislation.

> The officer told me about a case she'd had which was a "proper textbook" controlling and coercive behaviour "except it's not, because they don't live together anymore" … "well it is, but it's not" … "it was straight out of training school" and "I wish I'd had a student with me", despite the crimes being recorded as two common assaults … She had advised the victim it would be hard to pursue stalking due to the on/off nature of the relationship, allowing the suspect to stay etc. (First response)

In addition to this perceived limitation of the scope of the legislation, there was a strong perception among police investigators in both fieldwork sites that the controlling and coercive behaviour offence is problematic to pursue and evidence in practice.

> [The officer] described the coercive control law as "woolly" and that some of the behaviours involved may be considered normal, to a point, implying that in some relationships what was considered fine may be reinterpreted as abusive once the relationship soured … She said "the bar had been set high", and that there are "no hard and fast rules" … and described the offence as difficult and long-term. (Investigation)

We pick up on ways in which disclosures of controlling and coercive behaviour can be normalised or treated with suspicion, below. However, the perceived difficulty of operationalising the offence appeared to be shared by frontline officers. Specifically, across both sites, there was a perception of a very high threshold for evidencing the offence.

> I asked the officers about coercive control and how much of it they saw. One said they don't see much, and the other said "not as much as I expected". He said they had recent training input from [a domestic abuse investigator] which made it clear that coercive control needs to be "life-changing". (First response)

> [Referencing the coercive control offence] the officer said: “We’ve had training on it, there needs to be a F*** TONNE of stuff” and implied the evidence threshold was very high. (First response)

Noticeably, when discussing evidential requirements, officers focused almost exclusively on evidencing an adverse effect on day-to-day activities rather than considering the alternative provision of putting in fear of violence, which appeared to be hardly used or recognised.

> The officer admitted he had not known about the putting in fear of violence element. He seemed a conscientious officer, and I sensed he was a little disappointed not to have known. (First response)

> The officer said you need a lot of evidence to prove coercive control, which needs to show a “timeline”. He gave examples of a woman with a successful career who ends up losing it, or bank records showing specific patterns of reduced or restricted spending, or a pattern of a victim gradually withdrawing from friends and/or clubs and hobbies. He said it was a “really serious offence”, and “a genuine one usually sticks out a mile”. (Investigation)

This idea that coercive control cases are exceptional appeared to inform officers’ evaluations of abusive behaviours reported by victims; there was a sense that victims’ accounts frequently did not meet the seriousness or evidential threshold understood as required by officers.

> [Referencing the coercive control offence] the officer said it has a “high evidence threshold” … while people will often say yes to the question about control on the [risk assessment], their responses frequently “don’t stand up to challenge”… for example, “people will say ‘he doesn’t like me seeing my friends’, but when you ask do you see them they say well yes I see them anyway.” He said it is good legislation, but just not commonly observed … “in [this town] it is all a bit ‘petty’.” (First response)

> The officer said coercive control is very difficult to prove – that sometimes the [call] log will say somebody is being controlled but that “[the victim’s] interpretation of being controlled is different to ours.” (First response)

This sense of an extremely high threshold was also evident in specific examples officers would reference when discussing coercive control cases they had heard about in their force. Specific extreme cases were highlighted to researchers by both investigators and first response officers.

> She gave an example of a 'genuine' case where a man had full surveillance in his house and his wife had a time limit to get back from the school run and so forth; this man was also excessively jealous, while conducting his own extra-marital affairs. (Investigation)

> One officer mentioned he'd heard of a case … where a man had met a younger, "vulnerable" woman … and had been "horrifically" abusive to her, e.g. had kept her imprisoned in the home, tied to the bed and had been "waterboarding her" and subjecting her to other forms of psychological torture. (First response)

That such cases are referenced frequently between officers as exemplars of coercive control perhaps helps explain why officers are missing or failing to record much of the coercive control they encounter: police are looking for such particular and high levels of abuse they are failing to identify its presence in their everyday practice. Paralleling Hohl and Stanko's (2015) analysis of police decision-making in rape cases, officers in both forces reflected they would only try to take the most 'serious' coercive control forward using the Section 76 legislation because they believed the Crown Prosecution Service (CPS) would only prosecute cases which are unequivocally 'clear cut'.

Police culture: Cynicism, gender, and minimising coercive control

Officers were in fact observed failing to identify or record coercive control in cases where a course of conduct was apparent. In some circumstances, officers appeared to compare the behaviours disclosed to the offence's abovementioned (perceived) high evidential threshold. This practice was noted particularly in the context of victims with an established history of police contact, despite their 'repeat' status indicating an ongoing pattern of domestic abuse:

> The officer said he had been to this house several times before. The woman said she couldn't cope with her partner's behaviour anymore and disclosed several behaviours that constituted coercive control, including: he would call her hundreds of times a day (the man called her multiple times while we were there); he would not let her leave the house and constantly accused her of having affairs; he threatened and controlled her and used her mental health problems to 'gaslight' her. There also appeared to be punch holes in several of the internal doors. However, after establishing that no assault had taken place that day, the officers shifted their focus to responding to the incident as a 'verbal-only', non-crime incident and stressed the importance of ending the destructive 'arguments' between the woman and her partner … The officers later suggested they didn't think this incident involved coercive control, commenting that coercive control victims "tend to be more timid" and are visibly controlled, unlike this woman who was too "fiery, like a woman possessed." (First response)

This example speaks to the way in which, for these officers, the identification of coercive control was interconnected with their construction of a 'real victim' and idealised victimhood (Christie 1986) which is invariably gendered and not trauma informed.

We also observed officers drawing upon their own gendered assumptions and values about intimate relationships to determine whether cases involved, or should be recorded as, coercive control. One example was a case attended by two male officers, where a woman disclosed her husband regularly threatened to kill himself, and was 'controlling', and 'sexually coercive':

> The officer said he asked the woman to explain what she meant by sexual coercion, expecting a rape disclosure, but instead said she disclosed what he deemed to be a 'normal' marital argument about sexual relations: her husband wanted to have sex much more than she did, often at particular times of day, which caused a lot of 'arguments' and 'problems' between them. Additionally, her partner frequently asks for anal sex, which she does not like and says no to, but eventually she feels forced into saying yes to 'keep the peace' and to avoid any more 'trouble'… The officer clearly viewed the woman's disclosure as 'trouble-making', later stating: "They've been married for 7 years, so it's normal that they'd be having less sex, and it's normal if he's frustrated and wanting to do something about it … I told her if you don't want to have sex, just don't have sex." (First response)

Here the officer draws upon stereotypical constructions of gender which trivialise the woman's disclosure of sexual coercion and normalise male sexual entitlement, positioning women as 'gatekeepers' to sex, and also decontextualising consent from gendered power inequalities, including the lived consequences that refusing sex might incur. This is but one example observed, across both forces, where officers were particularly poor at identifying and responding to 'chronic sexual violation' (Palmer 2020) in controlling relationships. In another example:

> The report said the man 'forced himself' on the woman and that she eventually said 'get on with it' to get it over with. [The investigator] said "she hasn't told him not to" and described the report as "kind of consent" and the allegation as "pretty weak", but "not nice". She seemed to be advised fairly quickly not to pursue it and said she would "crack on with the [physical] assault bit". (Investigation)

Officers additionally drew upon their own gendered values and assumptions relating to the division of labour in intimate partnerships to discern whether coercive control was present. In the below excerpt, a woman had disclosed, among other abusive behaviours, that her partner continuously 'got on' at her about housework, and officers again interpreted this as a 'normal' marital argument:

> The officer suggested he sympathised with the husband and thought he "had a point" to an extent; the woman worked part-time from home, and if he were the husband he would be annoyed if he came home after being out "working all day earning money to find the house a mess, or the three children not yet fed." (First response)

The gendered normalisation and minimisation of controlling behaviours seemed particularly apparent in observations involving male officers (and heterosexual relationships), potentially speaking to the enduring influence of hegemonic masculinity across police occupational practice and culture (see for example Loftus 2009). Certainly, several female officers commented on the gender inequity they faced at work, referring to their shift as a 'boy's club', citing examples of sexist and sexualised laddish 'banter' at the station and male officers insisting on driving response vehicles when crewed with women.

However, it is also important to note the degree of scepticism and cynicism with which many disclosures were met by both male *and* female officers. In some circumstances this suspicion related to victims using 'buzzwords', such as 'coercive control' or 'stalking', to instigate a robust police response:

> The officer said some victims exaggerate their responses as they know the key 'trigger' questions … The implication appeared to be that some victims do this to try and get the perpetrator into as much trouble as they can. (First response)

> The officer commented that he had been surprised the woman used phrases like 'controlling' and 'sexual coercion' and thought these were unusual words for a victim to use – leading him to suspect the woman had "words put in her mouth" by a domestic abuse charity, or was deliberately using "buzzwords" to ensure police action. (First response)

In other circumstances officers talked openly of their unsubstantiated suspicions that victims make dishonest or vengeful domestic abuse allegations:

> One officer articulated his belief that [victims] "will make stuff up after they've had an argument, to get him in trouble" [and] that many reports involved "point scoring" and "then as soon as they've made the report they'll deny it ever happened and back each other up". Another pointedly and repeatedly stated that "[domestic abuse] victims lie", which went unchallenged by all the other officers present. (Investigation)

Police response structure and resources

A further key theme which impeded the use of the coercive control offence was the structural and operational management of the police response to domestic abuse more widely, much of which appeared to be shaped by constrained resources. Resourcing has been a significant issue for policing since the onset of national austerity following the 2008 financial crisis. Between 2010 and 2019, the number of full-time officers decreased by more than twenty thousand (Home Office 2019), alongside a significant decrease in numbers of police staff.

Resourcing problems appeared most acute at the investigative stage, though certainly there were pinch points observed in the frontline response:

> At the start of the shift there were no police cars available; we had to wait for over an hour for the previous shift to return their cars before we could go out on response … Many officers were tied up on scene preservation … A high-risk missing person case was called in, which tied up all the remaining available officers except our car, which seemed to be tasked with only responding to the most urgent calls, and with as quick a turnaround as possible. (First response)

Nevertheless, we also observed some first response officers devoting significant time and resources to attending, risk assessing and writing up cases of domestic abuse.

> The officer summed up by saying "that was a proper domestic". Though there was clearly a lot of work generated, at least some of which the officers appeared to think was excessive, the officer said he would rather do all that work than have something else [abusive] happen in cases like that. (First response)

In both forces, the acute impact of long-term budget cuts and under-resourcing were apparent. Staff in investigative units spoke at length about feeling overworked, carrying very heavy caseloads, and facing significant staffing shortages due to colleagues being off with stress.

> The officer explained she had more than 25 open cases on her workload and just couldn't cope; she had gone off sick for two weeks due to stress and only recently returned, but she "still wasn't right" … "but you know you just have to get on with it, because if you don't do it, no one else will; there's no one else to hand your cases and victims over to if you go off on the sick." (Investigation)

Accordingly, officers reflected on how their workload impacted their investigative practice and the hours they worked. A particular concern was the implications of picking up new cases that had come into custody overnight. In both forces, at the start of a shift, investigators on general rotation would be allocated a new

case with a suspect in custody. Although cases considered particularly serious or high risk might be dealt with to a slower timescale, the general expectation was seemingly that the secondary investigation, including the suspect interview and preparation of the case file for a charging decision, would be concluded prior to the end of the shift and/or the end of the suspect's custody time limit to avoid the case being carried over onto officers' caseloads.

> The officer said she likes to commence a suspect interview by 10am as any later means it is difficult to wrap it up in a day and you can't handover to anybody – either you are late off, or your caseload builds up. (Investigation)

> The officer commented that although she is supposed to finish at 4pm every day she often finds herself working until 2am, trying to "tie up" cases that have come into custody, which she said is particularly difficult for her because she is a single mum with young kids. (Investigation)

One supervisor explained that, even on days where there are no custody jobs, resources are so limited that outstanding cases have to be heavily triaged and officers deployed strategically, so they are often only able to advance the most high-risk investigations:

> "Sometimes I feel like I come into work in the morning, stick my hand into a massive bucket of horrible cases, and see what the riskiest thing I pull out is – then that's what I'll have to sort out that shift." (Investigation)

Clearly, this reactive model of investigation does not appear favourable to pursuing the Section 76 offence where, compared to other offences, the abusive behaviours and impact on the victim may be less straightforward to identify and document. An investigator faced with a case involving a physical assault with injury and some suggestion of coercive control likely has greater incentive to pursue the former (see also regarding first response, below).

Considerable work is also required to prepare a case file for the CPS to make a charging decision. Officers in both forces said administrative staff used to complete much of this work, but this support had been

abolished following cuts to resources. Much of the case file preparation – redacting witness statements, for example – appeared routine and did not need to be undertaken by a trained investigator. Investigators taking up this additional administrative work appeared to reduce further the scope for investigation. Officers also referenced that cuts to CPS resources made it very difficult to communicate with prosecutors – with some citing examples of being left on hold for hours at a time, when trying to ask for evidential advice – adding further disincentive to building a case for coercive control if there was a more straightforward alternative.

Incident-focus

The way in which the criminal justice system is structured traditionally around discrete 'incidents' has been recognised in previous research as problematic for (police) responses to domestic abuse (see for example Stark 2007). This incident-focus was also observed in this study as impeding the application of the coercive control offence and appeared to be prompted at least in part by reduced resources and officers' perceptions about the legislation. For example:

> The officer mentioned he had a lack of time and space to "do jobs justice" sometimes, which he did not feel good about. He exemplified: they are only allocated 45 minutes for each scheduled response job, and his heart sinks when he asks a victim "tell me what's happened" and they respond "well it all started 8 years ago, when we first got together…" … As soon as he hears this, he becomes worried about missing the next appointment and tries to bring the conversation to the point, i.e., "yes, but why am I here today?" (First response)

Such an approach is obviously problematic for identifying and recording a course of controlling and coercive conduct and emphasises the incident-focused approach still embedded in police practice (Robinson *et al*. 2018).

Even when attending cases with a prolonged abuse history, we observed in some officers a focus on the circumstances of the most recent call to police, and especially on traditional offences such as physical assault. This finding echoes previous studies which have found a lack of understanding among practitioners of ongoing domestic abuse (Robinson *et al*. 2018, Brennan *et al*. 2019), yet we also observed cases where officers

displayed an understanding of the prevalence of coercive control alongside an apparent reluctance to pursue the offence over more familiar crime types.

> I asked what proportion of domestic cases he thought involved some form of controlling or coercive behaviour, and he said it was probably "a majority". I asked why then were there relatively few cases recorded or charged as coercive control. He said the offence was quite a grey area, evidentially … that in most cases you could work with something else – an assault or a criminal damage. (First response)

Notably, an (over) focus on the current incident was not confined to first response officers. Domestic abuse investigators often appeared to focus primarily on the circumstances of the most recent call to police.

> I asked the officer if when interviewing suspects she focused mainly on the incident, or whether she asked about the wider context. She said you have a duty of care to the person detained who has been deprived of their liberty, and so you try to progress it as expediently as you can. So she would consider the history later. The interview focused primarily on the current incident, despite [the suspect] referencing some of the wider context. The officer did not probe around coercion or putting in fear of violence. She didn't mention the controlling behaviour disclosed on the risk assessment or ask about the frequency or intensity of previous physical violence. (Investigation)

This incident focus appeared therefore to be driven in part by pragmatism and informed by the common perception that coercive control is 'hard to prove'. One detective mentioned he would be concerned by charging a suspect with 'only' coercive control and no accompanying offences because he believed the CPS hardly ever prosecute coercive control alone. He explained this would make him worried about the case being dropped entirely, which could put the victim at greater risk; at least if there were other charges to fall back on, certain safeguarding measures would remain in place.

Discussion

Critical opinion was (and remains) divided on the merits of introducing legislation to criminalise coercive control. Some observers were concerned that the points to prove in the Section 76 legislation represented a

'low bar' evidentially, with the potential for malicious counter allegations and the criminalisation of primary victims. Other commentators felt, given the complex and gendered dynamics of interpersonal abuse, the offence might be 'successfully charged only in those cases where … there is independent evidence of levels of coercive control that are overt and extreme' (Tolmie 2018, p.59). Our findings accord with the latter suggestion: officers spoke almost universally of a 'high threshold' for evidencing the offence. Critics were also concerned the introduction of the law would cause police to lose focus on prosecuting physical assaults as they waited for a course of conduct to emerge. We observed the opposite: prosecution of physical assaults as a 'quick win' often came at the expense of identifying and prosecuting coercive control. Our findings help to explain why coercive control still represents a very small proportion of recorded domestic abuse crimes, and why research conducted in other English police forces found the offence to be under recorded and the legislation underutilised (Barlow *et al*. 2020, Barlow and Whittle 2019).

It should not perhaps be surprising that implementation of this legislation has not been wholly successful. Legislation to criminalise harassment was introduced in England and Wales in 1997 and amended in 2012 to create a specific offence of stalking. Yet an inspection report by HMIC/HMCPSI suggested in 2017 that some officers still struggle with the course of conduct element of the offence, responding to 'incidents' in isolation and not understanding patterns of behaviour. Similarly, our study identified specific factors that are impeding the successful implementation of the coercive control law, including the scope and framing of the legislation, significant under-resourcing, and police knowledge, attitudes and understanding.

Observers have argued the governmental framing of Section 76 – as filling a gap in the law around non-physical abuse[10] – misaligned the offence with academic and advocates' conceptualisations of coercive control and created a false dichotomy between physical violence and non-physical coercion (see Youngs 2015, Weiner 2020). Our analysis supports this suggestion. We observed officers focus almost exclusively on the 'impact on daily activities' element of Section 76, as opposed to the 'putting in fear of violence' provision. Additionally, physical assaults were pursued largely in isolation, as opposed to being situated within a wider course of abusive conduct. We believe the wording of the legislation does not dictate this interpretation per se; where there are (frequent) physical assaults, fear of violence seems likely, especially if that violence follows a pattern relating to specific threats or activities. Similarly, repeated assaults – in the absence of non-physical coercion and threats – may instrumentally impact daily activities (such as attendance at work or contact with family and friends). Thus, despite the statutory guidance issued by the Home Office exemplifying physical and

sexual assault as coercive behaviours used by perpetrators, it appeared that police in this study focused primarily on (the impact of) non-physical coercion if considering pursuing Section 76.

A further issue with the Section 76 legislation was its restricted application to current partners, or resident ex-partners. Again, the legislation was pitched as filling a gap, after case law established courses of stalking and harassing conduct could apply only to cases involving ex-partners (see Weiner 2020). Yet researchers observed numerous cases involving controlling and coercive behaviour by non-resident ex-partners where it was seen as not possible to charge either coercive control or stalking. We understand stalking will rarely be charged if there is continued contact between the victim and perpetrator and, in many cases, it is difficult to pinpoint the 'end' of relationship, especially where there is ongoing child contact, or the perpetrator coerces the victim into further engagement.

Our analysis therefore supports, on balance, the extension of the Section 76 offence to cover non-resident ex-partners, as provided for in the Domestic Abuse Act 2021. Although, under the original legislation, police could theoretically pursue coercive control by an ex-partner that had occurred prior to the break-up of a relationship, it would likely be harder to prove a 'serious effect' in relation to historic abuse, especially if more recent abusive behaviour had increased in frequency and/or severity. Clear guidance, however, must address when to charge for stalking, as the latter attracts a maximum sentence (ten years) twice that of coercive control.

We also identified the attitudes and (lack of) knowledge of some officers as impeding the successful implementation of Section 76. While some officers displayed a sensitivity to the gendered nature of domestic abuse, others appeared to draw upon problematic sexist assumptions about 'normal' relationships to trivialise disclosures of some abusive behaviours, including sexual coercion. Elsewhere, we observed coercive control reports seemingly being met with cynicism and suspicion, generating concerns about the ongoing, malign influence of misogyny and compassion fatigue on police occupational culture. Taken together, it is difficult not to conclude, as Youngs (2015) cautioned prior to its adoption, that the legislation thus far has failed to recognise and validate the experiences of many victims of domestic abuse. Where officers did identify coercive control, it appeared many found the perpetrator's actions easier to document than the consequential 'serious effect' on victims, particularly regarding emotional harm. Yet officers drawing on problematic gender norms in their practice does not appear to have resulted in the criminalisation of women, as some observers feared; those charged and convicted under Section 76 are almost exclusively male (Office for National Statistics 2020).

A third factor is resources. The impact assessment undertaken in advance of Section 76, we suggest, underestimated the policing resource required for its successful implementation. In both forces, investigative units appeared significantly under-resourced, with officers experiencing high caseloads and occupational stress. To avoid an unmanageable backlog, officers often tried to 'wrap up' custody cases from suspect interview to charge within a single shift, minimising scope for reflective practice, and creating a strong incentive for pursuing traditional, 'straightforward' offences such as physical assaults, as opposed to investigating coercive control. A potential solution would be to improve the recording and documenting of coercive control by first response officers, such that the initial victim statement provides evidence both of behaviours and 'serious effect' and precludes the need for further investigation and a second statement. Our findings suggest this solution would require a significant uplift in knowledge and practice for some first responders (see also Weiner 2017) with implications for training and supervision. A preferable albeit possibly even more resource intensive option might be the wider use of video recorded narrative interviews which have been shown to elicit wider context and more detailed, accurate evidence in cases of rape and sexual assault (Westera *et al*. 2016). Greater use of video-recorded evidence would mean investigators would not be able to finalise cases within a single shift and may have implications for partners agencies if victims required greater support from independent advocates and support services due to the more intensive nature of the investigation.

The issue of resourcing was also apparent when officers discussed other agencies, especially the CPS. Indeed, it appeared at the time of data collection that the CPS was operating, in one research site at least, a policy of only providing an immediate charging decision in cases classified as 'high risk'. It is possible that officers' experiences of CPS decision-making, and subsequent 'second guessing' of CPS practice in the context of reduced communication, has resulted in a negative feedback loop whereby the perception of a high evidential threshold for the offence is constructed and maintained. Interviews with prosecutors were not possible, due to the onset of the COVID pandemic. Future research could helpfully consider the interface between police and prosecutors relating to coercive control in greater depth.

In summary, we suggest the factors identified in this study comprise a context that does not favour successful implementation of the coercive control offence. The convergence of political and economic decision-making relating to the drafting and framing of the legislation and distribution of resources (both nationally and locally) combine with institutionalised gendered power relations to inhibit the successful

operationalisation of the Section 76 offence. We do not suggest the identified status quo is universal, or immutable. We do suggest that, to improve police responses to domestic abuse generally, and specifically to create a context that is conducive for the identification, investigation and prosecution of coercive control, wider systemic change is required. While officer-level attitudes and knowledge are important, and there is some evidence that training such as the College of Policing's Domestic Abuse Matters programme can improve officers' understanding (Brennan *et al*. 2021), without coherent and connected efforts to address all the factors we have identified, the poor implementation of the coercive control offence is likely to continue.

Concluding comments

The criminalisation of coercive control in England and Wales has seemingly not resulted in the unintended consequences feared by some commentators, yet neither has it benefited victims to the extent its proponents envisaged. Critical opinion appears to favour Scotland's legislative approach, which is framed as 'domestic abuse' as opposed to the narrower 'coercive control', and where the points to prove are restricted to the perpetrator's behaviour and intent rather than the more problematic 'serious effect' on the victim (see Bettinson 2020, Stark 2020). Our paper has shown, though, that there are opportunities to increase the effective use of the legislation in England and Wales by addressing the factors impeding its implementation, such as through amending the scope of the legislation and statutory guidance, greater resourcing and the upskilling of officers. It is crucial the present unconducive context is holistically addressed, and that the extent, nature and harms of coercive control are adequately recognised, recorded and responded to by police forces. Failure to do so will preclude immediate and appropriate safeguarding and support to victims and continue to negatively impact victims 'downstream' – in relation to child contact and family court proceedings (Barnett 2017), the accurate representation of crime data and criminal histories for things such as disclosure schemes (Hadjimatheou and Grace 2021) and interventions targeting serial perpetrators. Above all, improvement is required to ensure criminal justice responses recognise and reflect the totality of perpetrator offending, and the significant harms and experiences of victim-survivors of domestic abuse.

Notes

[1] https://www.legislation.gov.uk/ukpga/2015/9/section/76/enacted

[2] Womens-Aid-Response-to-Home-Office-DV-Law-Consultation-October-2014.pdf (netdna-ssl.com)

[3] Home-Office-consultation-Strengthening-the-Law-on-Domestic-Abuse.pdf (refuge.org.uk)

[4] Serious Crime Bill Deb 20 January 2015 c188.

[5] Serious Crime Bill Deb 20 January 2015 c189.

[6] Personal correspondence with Home Office officials, first author.

[7] At the time of writing, around half of English and Welsh forces have adopted the DA Matters training.

[8] impact assessment - strengthening the law on domestic abuse (publishing.service.gov.uk)

[9] "He has ongoing, indefinite power to destroy our lives." Why the Domestic Abuse Bill must not forget victims of post-separation control - Surviving Economic Abuse

[10] Coercive or controlling behaviour now a crime - GOV.UK (www.gov.uk)

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