

**Title:** Putting Coercive Control into Practice: Problems and Possibilities.

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**Abstract.**

There is growing international interest in translating Stark's (2007) concept of coercive control into criminal justice policy and practice. In December 2015 an offence of coercive control was introduced in England and Wales. This paper offers an empirical investigation of the problems and possibilities associated with the translation of this offence into practice in one police force area in England. The findings offer some scope for optimism in response to patterns of abuse, but they also support the view that the current gender neutral version of the legislation requires revision; there is a need for greater resourcing and training to improve understandings of the nature and impact of coercive control at all points of contact within the criminal justice process; and finally, it remains the case that effective responses to domestic abuse need to be genuinely holistic.

**Key words:** coercive control, police responses, domestic abuse

**Introduction**

The presence of coercive control in intimate partner relationships and the gendered nature of this abuse has long been recognised (see inter alia Schechter, 1982; Johnson, 1995; Stark 2007; Pitman, 2017). Its effects have been documented on children (Callaghan et. al. 2018), on mothering practices (Heward-Belle, 2017), in what Elizabeth (2018) has called 'custody stalking', as well as in the digital world (Harris and Woodlock, 2018). However, the ways in which coercive control might be measured, and subsequently rendered actionable, is subject to ongoing academic debate. Indeed Hamberger et.al. (2017) list 22 different definitions and associated ways of measuring coercive control. Stark's (2007) concept of coercive control

has gained significant currency in the UK, with many academics, policy makers and practitioners understanding domestic abuse through this lens. His concept attempts to capture the ‘cage’ of intimidating, degrading and regulatory practices engineered by abusers to inculcate fear and threat in victims’ everyday lives (Myhill, 2016: 357; see also Kirkwood 1993). Stark emphasises the centrality of gender arguing that coercive control most frequently operates within heterosexual relationships in which men use “social norms of masculinity and femininity... to impose their will” (2007: 6; see also Westmarland 2015).

Despite the theoretical and empirically contested nature of this concept (Walby and Towers, 2018), it has made its presence felt within criminal justice policy in different ways in different jurisdictions. Sheehy (2018) offers an examination of the deployment of this concept in expert testimony to the court in a case of murder in Canada, and Midson (2016) provides an analysis of its potential use as a defence for murder in New Zealand<sup>1</sup>. Others have suggested this concept as a useful adjunct to already existing offences (see Ortiz 2018; Stansfield and Williams, 2018). The embrace of the concept of coercive control in England and Wales, discernible in the Home Office definition of domestic abuse introduced in 2014, has followed a different legislative route. This has generated some interest in Ireland, Denmark and Australia. It should be noted that Tasmania introduced two offences: one of economic abuse and one of emotional abuse and intimidation in their Family Violence Act in 2004. Both of these fit within the rubric of coercive control and both are couched in terms of an ongoing course of conduct (see McMahon and McGorrery, 2016). In England and Wales in December 2015 a new offence of ‘controlling or coercive behaviour’ (hereinafter ‘coercive control’) was introduced in Section 76 of the Serious Crime Act. Therein it states:

"A person (A) commits an offence [of coercive control] if—

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<sup>1</sup> See also the Challen Case in England and Wales, 2019.

(a) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive, (b) At the time of the behaviour, A and B are personally connected, (c) The behaviour has a serious effect on B, and (d) A knows or ought to know that the behaviour will have a serious effect on B."

The Home Office (2015: 3) suggests this offence 'closes a gap' in law since existing stalking and harassment offences could not be applied to ongoing intimate relationships. Thus this legislation affords the first opportunity to consider the coercive and controlling effects of a course of conduct between partners. The legislation draws heavily on the work of Evan Stark but with some notable differences. For example, unlike the legislation introduced in Scotland in 2018, the legislation in England and Wales is gender-neutral and allows for the possibility of other family relationships to be included within its terms (Hester & Stark, 2019). It has been hailed as a move forward in recognising the persistent nature of domestic abuse and in setting a framework for encouraging criminal justice professionals to embrace such abuse as a *process* occurring over time rather than as a one-off event.

The introduction of this legislation sits squarely in support of those who believe in the (at least) symbolic power of the law to change people's lives. Such beliefs notwithstanding, the extent to which the law, in and of itself, can effect change, especially in relation to intimate partner violence, has long been subject to debate (see inter alia Wilson 1983; Smart 1989, Hanna, 2009; and more recently in relation to this particular law, see Walklate, Fitz-Gibbon and McCulloch, 2018, and Tolmie 2018). Put simply, the law does not exist in a vacuum. Laws require interpretation and implementation. Thus when new offences are created demands and expectations for the wider criminal justice process, from the front-line police officer, to the prosecutor, to the judge, are also created. This paper focuses particular attention on the problems and possibilities for the implementation of this relatively new and unique legislation by analysing the response to it in one police force in the North West of

England, from here referred to as ‘the partner police force’. This is the first study to examine the implementation of the new offence on policing practice and as such carries implications for other jurisdictions contemplating moves of this kind.

The paper falls into four parts. The first part contextualises the study on which this paper is based. This offers a brief overview of the wider problems associated with the policing responses to intimate-partner domestic abuse. The second presents this study and its method of investigation. In the third part we present our findings and in the fourth and final part we offer a detailed analysis of the policy problems and possibilities posed for policing this offence as it is currently framed within the 2015 legislation. In the conclusion we discuss the broader policy and practice implications of this research for the UK and other jurisdictions considering the introduction of offences of this kind.

### **Policing Intimate Partner Abuse**

Whilst, as Belknap and Grant (2018) point out, the 1967 President’s Commission on Law Enforcement and the Administration of Justice had little to say about intimate partner violence per se, that commission did recognise the need to focus on the response to, and resource implications of, ‘domestic disputes’ as a routine feature of the front-line police officer’s day to day work. Contemporarily, it is beyond doubt that the focus on the policing moment in responding to cases of domestic abuse has been repeatedly interrogated in the U.S., the U.K. and elsewhere since that time. That focus has resulted in a range of policies featuring ‘positive’ policing<sup>2</sup>. Positive policing policies have travelled the globe sometimes with little appreciation of their efficacy in different cultural and political contexts outside of the northern hemisphere, (Goodmark 2015; Walklate and Hopkins, 2019) with this search for

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<sup>2</sup> Examples of positive policing or ‘positive action’ within the context of domestic abuse include pro-arrest approaches, which have been extensively critiqued due to unintended consequences (i.e. escalation of violence and dual arrest of victim) and can include a wide range of initiatives from arrest to prosecution.

effective policing responses gathering momentum as the nature and extent of such abuse has become increasingly documented globally (see for example Walby et. al. 2016).

Against this backcloth police forces in England and Wales have been consistently encouraged to engage in a ‘positive’ policing stance towards domestic abuse since the early 1990s. However, the value of this approach has been heavily contested (see inter alia Hoyle and Sanders, 1993; Loftus, 2009) leading to questions as to whether ‘positive’ approaches to policing always lead to ‘positive outcomes’ for victims (see also the assertions of Sherman and Harris 2015). As a result, the role of the front-line officer and their response to ‘domestics’ continues to be subjected to critical scrutiny in England and Wales (see inter alia HMIC 2014, HMIC 2015) with detailed attention being paid to three features of the policing response: the use of discretion in responding to intimate partner violence (IPV), the need for improvements in police training in understanding IPV, and the feasibility of tightening the rules around how policing response to domestic abuse is formulated. Taken together these features of policing are in many ways just as problematic contemporarily as they were when Sherman and Berk reported on their Minneapolis experiment in 1984, and much of the work on policing domestic abuse since that time endorses these as problematic areas (see, for example, Barlow and Walklate, 2018). The question of the role of ‘cop culture’ seems to be especially intransigent (Loftus 2009). The introduction of the offence of coercive control in England and Wales, and the challenges such an offence poses for front-line officers, stands as testimony to the ongoing presence of the difficulties of implementing change in relation to IPV. As Walklate, Fitz-Gibbon and McCulloch (2018: 5) point out,

The implementation of the new offence is reliant on a police officer’s ability to identify the potential presence of coercive and controlling behaviour, elicit information on a series of abusive events from the victim and correctly assess that behaviour, in terms of laying charges. This requires a reframing of an officer’s typical approach from responding and

taking stock of crime ‘incidents’ as isolated events towards looking to a series of interrelated events and the harm that flows from these.

This quote captures nicely the way in which challenging ‘an officer’s typical approach’ intertwines with the role of the use of discretion, (in taking action or taking no action), in the implementation of this new offence (Myhill and Johnson 2016). Indeed guidance offered by the College of Policing (2016) states: ‘Officers must base their decision to arrest or not to arrest on their professional judgement, which itself must be based on the best information available’. The need for evidence to proceed to prosecution and the presence of physical violence as constituting evidence feature prominently within police officer’s ‘constellation of risk factors’ (Robinson et. al. 2016) in making judgements in relation to cases of domestic abuse. Herein there is a tension for the practical implementation of the offence of coercive control, since such behaviour may or may not include physical violence and thus potentially introduces a further level of uncertainty in relation to an officer’s typical approach to IPV. Indeed for Stark (2007) violence per se is not the defining characteristic of coercive and controlling behaviour. Thus this new offence poses new opportunities and challenges for the policing of domestic abuse.

### **Coercive Control: Evidence to Date.**

By the end of 2016, there had been just 27 convictions for coercive and controlling behaviour, with only 24 sentences of immediate custody - none of which were for the 5-year maximum term as permitted within the legislation (data offered in response to a written question to the Houses of Parliament). By March 2017 there had been 4,246 crimes of coercive or controlling behaviours recorded for all of England and Wales (ONS, 2017). In addition, in late January 2017 the Bureau of Investigative Journalism based on Freedom of Information requests, reported patchy implementation of the new legislation nationwide

(McClenaghan and Boutard, 2017). Furthermore, although the number of police recorded crimes of coercive control increased to 9,052 in the year 2017/18, prosecutions and convictions have remained consistently low (ONS, 2018). ONS (2018) reported that 4686 defendants were prosecuted for coercive and controlling behaviour in the year ending December 2017. Out of these 235 (5%) offenders were convicted of coercive and controlling behaviour and 223 (4.7%) offenders were sentenced for this offence. The majority prosecuted for coercive and controlling behaviour were male (97%) and the average custodial sentence given was 17 months. (ONS 2018: 51). The picture of prosecutions and convictions becomes more complex as other offences can also frequently be part of the prosecution process. However, when set against the national figures of domestic abuse incidents and crimes recorded by the police of 1,198,094 to the year ending March 2018 (ONS 2018:15), offences of coercive control are small. Given the newness of this offence this is perhaps not surprising. Further to these statistics, the annual Police Effectiveness, Efficiency and Legitimacy Reports (referred to as PEEL) for 2017 (published March 2018) found general falling arrest rates for domestic abuse and lower prosecution rates despite the increasing rate of reporting such incidents to the police. In relation to the partner police force in the study reported here, PEEL 2017 noted a reduction in the arrest rate of nearly a quarter from June 2016 to June 2017, with cases in which there were evidential difficulties being higher than the average for England and Wales. Although we recognise significant regional variations in policing and measures of police performance, these statistics provide useful context about broader responses to domestic abuse for the partner police force in this study.

### **Overview of this Study**

This study comprised two data gathering phases. For context, the partner police force area has a relatively high rate of recorded crime relative to other areas in the UK (but typical for

this kind of area), with 118,879 crimes being recorded in the year 16-17 (ONS, 2018). The first data gathering phase involved quantitative analysis of all (anonymised) recorded crimes of domestic abuse (i.e. crimes marked with a domestic abuse ‘flag’) on the information management system (IMS) for this force from the 1<sup>st</sup> January 2016 (the legislation came into force on the 29<sup>th</sup> December 2015) to the 30<sup>th</sup> June 2017. After the dataset was processed and duplicates removed, there were 18,978 recorded crimes of domestic abuse<sup>3</sup>. This provided the base-line data from which it was possible to establish the overall patterning of, and responses to, crimes flagged by the police as involving domestic abuse during this time period. In this article we focus our analysis on the nine domestic-abuse related offence types that were recorded most frequently by the police force (see Table 1). Between them, these offences account for 75% (n=14,368) of all incidents within the dataset. They therefore represent a significant majority of the data and a range of offence types whilst maintaining categories of a suitable size for comparison. Basic descriptive statistics were calculated to provide numerical summaries in terms of demographics and victim and perpetrator relationships. We also produced basic descriptive statistics to summarise police responses to each offence.

The second phase involved a qualitative analysis of all the cases recorded as crimes of coercive control during this same time period (156 incidents). This involved accessing police data and case files using the police IMS. The qualitative data varied in terms of quality and depth. Although some cases featured extensive information, there was very little for others, particularly referrals or third party reports, therefore we were unable to quantify the qualitative data. As part of the analytical process, we analysed the nature and context of the crime report, police responses, and examined previous or subsequent occurrences connected

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<sup>3</sup> This sample reflects a particular ‘snapshot’ of police recorded crime files on the force IMS and each crime file is subject to the principal crime rule. Subsequently, these recorded crimes only represent the most ‘serious’ crime reported during each occurrence, and may be subject to change.



to the suspect and victim recorded on the system. This data was coded and analysed using grounded theory and thematic analysis (Boyatis, 1998) to identify over-arching themes in the data. In order to enhance inter-rater reliability, two researchers performed this analytic stage where themes were independently identified within the data and then compared and discussed to reach a thematic consensus. Given what is already known about the propensity of police officers to respond to domestic abuse when physical violence is present (Robinson et. al. 2016), the nature of the response to cases defined as coercive control was qualitatively compared with a random sample of (anonymised) domestic abuse assault crimes (91 in total) of Actual Bodily Harm (Section 47 assault) for the same time period. This was also the most frequently recorded crime in the sample, an additional reason for qualitative comparison. The coercive control cases will be discussed at length in this article and compared with the ABH cases as appropriate.

### **Quantitative Findings**

From January 1<sup>st</sup> 2016 to 30<sup>th</sup> June 2017 there were 18978 crimes of domestic abuse recorded by the partner police force. Of these crimes, 156 were recorded as coercive control. This number is considerably low, particularly when compared with other offences, as outlined in the table below. Table 1 serves two functions: it demonstrates the types of offence that dominate police activity in relation to recorded crimes (between them the nine most commonly occurring offence types comprise 75% of all cases) and it compares the frequency of coercive control with these most frequently occurring types of offence.

(INSERT TABLE 1 HERE)

Table 2 offers more detail on the characteristics of those offences recorded as coercive control as compared with the most frequently recorded domestic abuse offences, during the same time period.<sup>4</sup>

(INSERT TABLE 2 HERE)

As stated above, in order to contextualise our findings we compared police responses to coercive control to those offences accounting for 75% of all cases recorded in our sample. We wanted to determine if there were statistically significant differences between each category of offence in terms of sex, relationship and age in an intimate partner context. The sex and relationship variables were tested using a Chi Square test, which determined that there is an association between type of offence and victim sex, offender sex, type of relationship and dyad. We also wanted to determine if there were statistically significant differences in the average age of victims and perpetrators between offence types. Kolmogorov-Smirnov tests showed that the age variables are not normally distributed therefore Kruskal-Wallis tests were carried out on each of the age variables. This determined that age is not the same across the different offence categories. Table 2 therefore confirms much of what is already well documented in the wider literature on intimate partner violence. For all offence types, perpetrators are for the most part men and victims are predominantly women. In this sample, apart from crimes of criminal damage, the perpetrators and victims are of a similar age, which may be a reflection of the age of those victims willing to engage with the police for domestic abuse-related offences.

Finally we examined victim and perpetrator sex dyadically, i.e. analysing whether cases involved a female victim/male perpetrator; male victim/female perpetrator; female victim/female perpetrator etc. Similar to our analysis of the relationship between victim and

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<sup>4</sup> Table 2a in the Appendix features the data missing from the information management system

perpetrator, these characteristics showed more variation than other measures. The proportion of female victim/male perpetrator dyads ranged from 67.6% for ‘sending letters with intent to cause anxiety’ to 94.7% for ‘breach of non-molestation order’. The notable demographic similarities between coercive control and harassment are of particular interest here given the established connection between the behaviours and dynamics encapsulated within harassment and coercive control offences, particularly in the context of intimate partner domestic abuse (Home Office 2015, see also Stark 2007). For example, 95% of victims of coercive control were women, comparative to 96% for harassment. Such similarities between harassment and coercive control have also been identified in research conducted with Hampshire Police, when analysing the efficacy of a telephone-based police response to domestic abuse for standard risk cases (Robinson, 2017).

(INSERT TABLE 3)

Using a Chi-square test, we determined that there is an association between offence type and risk assessment, arrest, and whether or not the case was solved (see Table 3). These results indicate that there are significant differences between the police responses associated with each crime. Considering this further, a number of issues become evident. Firstly, despite coercive control cases being more likely to be assessed as high risk (42.9% in total), ABH cases were 15.6% more likely to be assessed as high risk and 20% more likely to result in an arrest and be charged. This may suggest that police officers were not taking coercive control cases as seriously as offences such as ABH, supporting the recent findings of Robinson et al (2016). However, the likelihood of arrest may also relate to the context of the police frontline response, i.e. whether the offender is still present on scene, and the immediacy of evidence available (Robinson & Chandek, 2000). Irrespective of this context Table 3 indicates that very few of the coercive control cases were solved comparative to other offences.

(INSERT TABLE 4)

Table 4 above provides a more detailed breakdown of case outcomes for the different offence types. Using a Chi-square test we determined that there is a significant association between the type of offence and outcome assigned. Prominently, significantly fewer coercive control cases were recorded as ‘no further action’ (NFA) due to victims withdrawing support of a prosecution, relative to some other offences such as common assault. Moreover coercive control cases were recorded as NFA due to ‘evidential difficulties’ in 30.1% of cases, which is markedly higher than other offences, such as criminal damage and assault. However, a notably high percentage of harassment crimes similarly faced no further action due to evidential difficulties. This suggests that police officers had difficulties evidencing patterned abusive behaviour, which will be discussed further below. To summarise: fewer coercive control cases resulted in an arrest and were solved in comparison to other domestic abuse offences, despite being assessed as involving ‘high risk’ by attending officers. In order to make further sense of these findings, an in-depth qualitative analysis of the 156 recorded coercive control crimes was conducted.

### **Qualitative Analysis**

The qualitative analysis is split into three sections, examining behaviours identified in coercive control cases compared with a sample of ABH cases; police responses to coercive control; and the investigation and outcome of coercive control cases. Note that the IMS has minimal personal reflections from officers and only basic rationales for decision-making are included, so we have summarised police responses in the examples provided below.

#### *Behaviours Identified*

One aspect of our analysis focussed on examining the types of behaviours present in the coercive control cases. Officers recorded the presence of a range of abusive behaviours in their crime reports many of which might not have been criminalised prior to the introduction of this offence. Examples include the use of digital surveillance technologies, sustained verbal threats and abuse, including so-called ‘revenge porn’ style threats, practices of isolation (such as from friends and family members) and deprivation (including depriving access to medication, phone and internet usage), and economic abuse. However, many cases also included behaviours that could have been responded to with existing legislation, such as false imprisonment, criminal damage, rape and physical assault, with the latter reported in 63% of the coercive control case files<sup>5</sup>

(INSERT TABLE 5)

The high levels of physical violence in these cases could be reflective of the behaviours that typically feature as part of coercive control. However, this could also suggest officers were identifying physical violence more readily (qua Robinson et al 2016) rather than a web of abusive behaviour as constituted in the new legislation. Our analysis of victim motivations for contacting the police (as logged on file) revealed that victims rarely contacted the police to specifically report sustained domestic abuse (or ‘coercive control’) and were more likely to report a different offence, most commonly assault or criminal damage. However, further problems with police identification of coercive and controlling behaviours were evident in our qualitative analysis of a random sample of 91 domestic abuse-related ABH cases.

(INSERT TABLE 6)

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<sup>5</sup> *C. ft 3*. Only the most ‘serious’ offence was recorded for each crime file, however we discuss offence charging decisions later in the paper.

In 87% of the cases that involved intimate partners there was evidence of coercive control identifiable through victim witness statements and previous occurrence records detailing repeat victimization. However, these had not been identified by police officers during investigations. For example, one case involved a woman reporting that her partner had assaulted her by pushing her over and stamping on her. This was recorded as a S47 assault (ABH). The woman is recorded as describing to officers that she also experienced other forms of sustained abuse from her partner involving a range of coercive and controlling behaviours. The man was listed as a repeat perpetrator of domestic violence against the woman who had been repeatedly assessed as a 'high risk' victim. Further high risk incidents were recorded following this particular report. Examples such as this suggest police officers may be missing key opportunities for identifying patterned abuse and indicate that the coercive control offence is not being used to its full potential. Police officers are experienced in responding to 'incidents' of domestic abuse, particularly physical violence, rather than a pattern of abusive behaviour. As noted previously, victims in our coercive control sample most commonly engaged with the police to report an assault (rather than coercive control) so it is perhaps not surprising that so many cases were recorded as ABH, even if the coercive control was present in the majority of the cases.

We identified two further themes underpinning the policing response to coercive control, firstly the initial police response and subsequent actions taken, and secondly the investigation and outcomes of the cases. Each of these themes will be discussed in turn.

### *Policing Response*

When recording a crime as coercive control, in some cases the victim's use of the word 'controlling' to describe her relationship was enough to trigger a crime of coercive control particularly by call-handlers who were often responsible for the initial crime recording of the

cases in our sample. This led to a mixed policing response. There were examples of cases where call-handlers recorded a crime of coercive control and a schedule response<sup>6</sup> was not allocated. There were also examples of cases which were recorded as coercive control but were investigated as an entirely different offence. This was particularly evident in cases where the initial report made to the police had involved a physical assault and/or possession of weapons (such as knives). This suggests, in addition to the missed opportunities for identifying coercive control as discussed above, there were also problems with the crime recording of such cases and the subsequent policing response.

There are two further issues identified within the initial policing response and subsequent actions taken there. Illustrative case examples demonstrate some of these issues. Firstly, in a number of cases the victim was not contacted by the police after her initial report for several days or in some instances weeks. In at least two cases the victim was not contacted at all. These cases were picked up by crime auditors over a month after the initial call. In both cases, when the police eventually contacted they withdrew their complaint. Secondly, police officers focusing on investigating isolated ‘incidents’ (such as physical assault or criminal damage), rather than identifying, responding to and attempting to demonstrate the presence of a pattern behaviour was also evident. For example, one case involved a woman contacting the police to report an attempted assault on her by her male partner. When the police spoke to the woman she reported various examples of coercive control, including isolation, and economic abuse. Moreover she was a repeat victim of domestic abuse according to the IMS. This case was recorded as coercive control. However, the ensuing investigation focused on the assault and gathering evidence for this particular ‘incident’, rather than investigating any pattern of abusive behaviour. Officers focussed on gathering ‘photographic evidence’ of the assault and

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<sup>6</sup> This response option is usually allocated to victims when it is concluded they do not need to see an officer straight away and they are subsequently invited to an appointment at the police station.

the ‘victims accounts of injuries’ (to quote the officer’s notes) with many of the woman’s descriptions of coercive control being disregarded as examples of ‘one word against the other, thus ‘weak’ or ‘unverifiable evidence’ (to again quote the officer’s notes). Additionally, we noted officers focused on describing and documenting isolated ‘events’ (related to assault) in the charge submission. These difficulties in the investigative process can be connected to the subsequent outcomes of the coercive control cases.

### *Outcomes and Evidencing Coercive Control*

Paralleling our quantitative outcome findings, our analysis of police case files highlighted that evidencing coercive control was particularly problematic for police officers with many citing the issue of coercive control being perceived as ‘one word against the other’ in the IMS, as noted above. We additionally identified that some evidential opportunities were missed and not investigated in cases of coercive control. This included officers not fully investigating evidence of coercive control disclosed in victim witness statements (such as behaviours being disclosed and not followed up by police officers), failure to seek third party witness statements, (for example from friends, family and professionals), and failing to capture effectively the victim’s initial account, or using body-worn cameras as a source of evidence. Furthermore, when cases were submitted to the CPS for prosecution there were a number of factors that were often cited as preventing the prosecution of coercive control cases. These included further investigation and evidence required, the case not meeting the required evidential threshold, and/ or coercive control being dropped from the charge sheet (with other offences, such as assault, leading to a charge).

Risk assessment may have also informed the level and type evidence gathered. For example, some cases which were assessed as standard risk resulted in an NFA outcome, with officers suggesting that these were ‘arguments between partners’ (quoted in IMS), rather than



examples of coercive control. Conversely there was an example of a victimless prosecution in the sample, discussed further below, which was assessed as high risk in which officers pursued a charge, irrespective of the victim's wishes to withdraw her complaint.

Difficulties associated with evidencing the offence may in part be attributed to a lack of understanding of coercive control. This lack of understanding could also explain the low arrest rate in the coercive control cases analysed. Myhill (2017) argues that an officer's decision to arrest is influenced by evidential rules for criminal offences, or the perceived availability of evidence (particularly physical injury), which may not always be clear-cut or identified in coercive control cases. Certainly, when comparing police outcomes between coercive control cases with and without evidence of physical violence in our sample, it is clear that cases involving violence were significantly more likely to be graded as high risk, result in arrest and be 'solved'.

[INSERT TABLE 7 HERE]

However, these differences in performance outcomes may also relate to the nature of the victim's initial contact with the police (e.g. to report an assault while the offender is still 'on scene'), the extent of victim engagement with officers, and their wishes in terms of taking a prosecution forward. Markedly, coercive control cases with and without violence similarly faced NFA due to evidential difficulties, suggesting that evidence building was problematic across all coercive control investigations.

Nevertheless, we also observed cases where police officers engaged in a thorough investigation and provided extensive evidence, but no further action was taken by the CPS. Evidence submitted in such cases included diary entries, harassing text messages and detailed victim statements. Cases which did result in a charge for coercive control incorporated evidence such as previous convictions for domestic abuse, admissions of guilt, substantial

physical evidence (such as criminal damage or a physical injury), the presence of surveillance technology, (for example in cars or on mobile phones), and police body-worn camera footage.

The views of victims did appear to influence charging decisions made by both the police and CPS, with some cases involving deliberations about victims' wishes, the risk posed in the case, the 'best interests' of the victim and any dependents, and the likelihood of their attendance at court if summonsed. There was only one 'victimless' prosecution for an offence of coercive control in our sample, where both the police and CPS determined that the risk posed to the victim was so great it was proportionate to prosecute the suspect against her wishes. However, there were also several cases where the police noted that the victim was disappointed their case was closed as NFA due to evidential issues, and victims requested such decisions to be reconsidered in at least two cases. Collectively there are two concerns to note here. First, there needs to be greater transparency on what constitutes 'strong' evidence in coercive control cases, particularly as physical forms of evidence may not always be available. Second, the responsibility for understanding coercive control extends to other criminal justice agencies, such as the CPS. Ensuring all organisations share a common understanding is of some importance, as alluded to by Bishop and Bettinson (2018).

Exact figures related to the number of people prosecuted for coercive control over the time period of this study are unreliable due to inconsistent recording of CPS activity on the force IMS, and because some of the cases were still pending at the time of writing. However, preliminary analysis suggests that 22 people faced charges in relation to the coercive control occurrences but only nine suspects were charged with the coercive control offence<sup>7</sup>. The remaining 13 were either charged with different offences by the CPS or the case was

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<sup>7</sup> The force IMS indicates that five suspects were charged with coercive control and a crime of assault, whereas the remaining four were charged as 'stand-alone' coercive control offences.

subsequently dropped before it came to court. Taken together, these figures add some detail to the low prosecution and conviction rate for coercive control for the police force partnering this research, which is comparable with that identified across all police forces in England and Wales (McClenaghan and Boutard, 2017).

To summarize; this research highlights various issues with the operationalization of the coercive control offence in its current form in policing practice. First, the low use of the offence is underpinned by missed opportunities in identifying crimes of coercive control. Second, despite being differently recorded, there were often similar behaviours present in the coercive control and ABH cases (i.e. coercive control was present in the majority of ABH intimate partner cases, and vice versa). Third, despite these similarities the police outcome is different with coercive control cases less likely to result in an arrest or to be solved in comparison to other offences. This difference is even more marked in coercive control cases without mention of physical violence. Fourth, problems were identified in the overall policing response to coercive control, particularly relating to crime recording, victim contact and an ongoing tendency for officers to investigate ‘isolated incidents’ rather than a pattern of abusive behavior. Finally, officers had difficulties in evidencing coercive control and failed to capitalise on a range of available evidential opportunities during their investigations. Taken together, these findings are suggestive of opportunities for improvement in understanding, investigating, evidencing and subsequently prosecuting coercive control. The potential implications for policy and practice on the basis of these findings are discussed below.

### **Discussion and Policy Implications**

The findings from this study reveal a complex picture of how the coercive control legislation is working in practice within the partner force area and highlight some key issues with the legislation and its operationalization. For example, victim and suspect characteristics provide

further evidence of the gendered nature of coercive control, supporting existing literature (e.g. Stark, 2007; Jane et al, 2018). Centralising the significance of gender in the legislation in England and Wales and perhaps taking a similar approach to Scotland would be a sensible way forward to maximise the full potential of the offence. However, as Burman and Brooks-Hay (2018) have pointed out and referenced below, the Scottish approach is not without its difficulties. Furthermore, the ‘promise’ of the legislation can be seen in the abusive dynamics and characteristics encapsulated within those crimes labelled as coercive control crimes in the data sample. These crimes involve a range of behaviours which underpin both the legislative and conceptual framework of coercive control (Stark, 2007). In capturing varied cumulative ‘courses of abusive conduct’, the coercive control legislation permits the criminalisation of (and subsequent police response to) certain behaviours which would not previously have been offences prior to its introduction. For example, some 37% of the coercive control crimes examined in our available sample did *not* include reports of physical violence – which, as discussed, has typically been centralised in police responses to domestic abuse. These findings do point to the potential of the coercive control offence in providing means through which police officers may robustly respond to sustained domestic abuse in instances where they might not have been prompted or able to previously. Even if markedly less than 37% of these domestic abuse occurrences could be responded to using the S76 offence then the coercive control legislation would still present a new and significant opportunity for the police to respond to ongoing, significant harm and risk occurring in the context of domestic abuse.

This argument is further bolstered if we consider the qualitative analysis of the ABH crimes conducted as part of this study – where it was identified that some 87% of intimate partner cases could, or should, have (also) been recorded as crimes of coercive control. With ABH comprising the most frequent type of domestic-abuse related crime recorded within the force

during the selected time period (3111 of which were recorded as involving intimate partners) – by extension we can conceive that, hypothetically, some 2600 further crimes of coercive control could have been recorded in these ABH cases alone. Thus, both these strands of analysis point towards the potential *significance* and *scale* that the coercive control offence might hold, for providing a ‘new’ criminal justice approach to domestic abuse which departs from the traditional focus on unrepresentative ‘isolated acts’ of domestic violence that can hide a broader web of abuse from view.

However the data also emphasises that there are still considerable issues with policing responses to coercive control. As previously discussed, a striking indicator in this regard is the particularly low number of coercive control crimes recorded by the force. This suggests that the offence is being both under-used and under-recorded by the force. This is further evidenced by the above mentioned examination of ABH offences which found missed opportunities for using the coercive control offence in almost 9 out of 10 intimate partner cases. This supports national-level data highlighting the low and patchy implementation of the offence nationwide (McClenaghan and Boutard, 2017). The low uptake of the coercive control offence is perhaps to be expected, given that recent police domestic abuse research has consistently identified poor police understanding and identification of coercive and controlling behaviours (Robinson, 2016; Myhill and Johnson, 2016). Although it should be noted that poor understanding is not solely the preserve of the police (Robinson et al 2018). We did encounter examples of good understanding and practice but there were notable problems with delayed responses and officers frequently struggling to identify and evidence *patterns* of coercive and controlling behaviour in victim/witness statements and their charge submissions. Instead many drew upon the description of several discrete domestic abuse incidents in an attempt to evidence the presence of coercive control.

A recurring theme within coercive control investigations was victim disclosures being considered as ‘weak’ or with ‘non-verifiable’ forms of evidence ultimately amounting to ‘one word against another’. Yet we identified a range of evidential sources officers failed to capitalise on which could have supported victim statements and strengthened their evidence portfolio. These findings go some way to explain the significant number of coercive control crimes which faced no further action due to ‘evidential issues’ within the force. Moreover this suggests officers would benefit from additional guidance for conducting coercive control investigations in terms of receiving direction on the array of evidential opportunities available in coercive control cases, and recognising and strengthening evidence of coercive control within victim and other third-party statements. Importantly, despite the coercive control offence requiring a significant shift in police focus and investigative practice (away from the traditional incident, violence focused approach), the partner force in this study, like all police forces in England and Wales, received no extra funding or training to assist with the implementation of the new offence. Moreover, it must also be recognised that the problematic police responses to coercive control identified in this research is situated within the broader landscape of policing domestic abuse related offences. Performance measures of other domestic abuse crimes (see Table 3) indicate that coercive control is not the only crime facing a less than optimal policing response. Of particular note are the arrest rates and recorded outcomes for crimes of Section 2 Harassment and Sending Letters with Intent, with solved rates of only 8% and 7% respectively. This is perhaps also indicative of a broader issue with the policing of *courses of conduct* in the context of domestic abuse.<sup>8</sup>.

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<sup>8</sup> The other harassment crimes in our sample relate to a particular offence committed in an established context of harassment – e.g the breach of a restraining order and non-molestation, so are less relevant to our commentary on the policing of domestic abuse ‘courses of conduct’.

Of course, policing domestic abuse does not take place in a vacuum and, beyond police culture and understanding, the current political economic climate is also central to shaping (and thus reforming) the operationalization of the coercive control legislation. This study was conducted at a time when the partner force, amongst others, was facing the consequences and impact of austerity measures on policing more generally. It is therefore important to consider police responses to coercive control within this context of austerity in which officers have been directed to alter their ‘craft’ (Bayley and Bittner, 1989) without adequate recourse to training or resources. It is also important to be mindful that, as already stated, problems responding to domestic abuse are not limited to police forces. As our findings demonstrated the Crown Prosecution Service also declined to prosecute coercive control cases - some of which were based on months of police investigation – frequently in favour of other ‘discrete’ crimes. Therefore a consistent and holistic ‘whole systems’ approach is required, which recognises the cumulative course of conduct involved in coercive control, and prioritises the implementation and resourcing of the legislation, in order to achieve lasting reform in criminal justice responses to domestic abuse.

## **Conclusion**

This article details research involving one police force and is the first study to examine the operationalisation of the new offence of coercive control. Its findings have national and international relevance. As discussed, the creation of the coercive control legislation symbolises a significant policy and legal shift. However, such policies and practices on their own are limited in their capacity to generate change. We suggest that for the offence to be implemented effectively three issues need to be addressed. Firstly, the current version of the legislation requires revision. In particular, our data supports the observations of Hester and Stark (2019), highlighting concerns with the gender-neutral nature of the offence in England and Wales. Secondly, there is a need for greater resourcing and training. The College of

Policing have developed and tested a new ‘DASH’ risk assessment that specifically foregrounds coercive controlling behaviour. However, our work suggests this needs to go further, highlighting the need for improved understandings of the nature and impact of coercive control at all points of contact within the criminal justice process - from call handlers, up to and including the Crown Prosecution Service. These requirements reach beyond the front-line officer captured nicely by Burman and Brooks-Hay (2018: 78) who state that:

Decades of policy and legislative reform of the criminal justice response to other forms of violence against women leave us somewhat pessimistic that the introduction of this new offence within Scotland’s adversarial context, which sustains forms of legal practice known to effectively undermine the spirit of any well-intentioned legislation, will fully achieve its bold ambitions ..... Legislative change cannot on its own lead to improvements. Whatever laws we have will be only as effective as those who enforce, prosecute and apply them. Improving these practices - through education, training and embedding best practice and domestic abuse expertise – is likely to be more effective than the creation of new offences alone.

This is clearly suggestive the different legislative response in Scotland is not a solution on its own. Finally, whilst criminal justice agencies are an important part of the response process for some victims, many will never contact the police to report the abuse they experience. Thus it remains the case that when considering effective responses to domestic abuse more broadly the focus needs to be on adopting genuinely holistic responses utilizing a whole-systems approach. This is encapsulated in Spencer’s (2016) idea of a ‘web of accountability’ in which the responsibility for responding to domestic abuse is shifted to *all* agencies which come into contact with abused women.



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**Table 1: Police recorded crimes of domestic abuse: most frequent offences types and coercive control from 1<sup>st</sup> January 2016-30<sup>th</sup> June 2017**

	Frequency	% in sample
Assault occasioning actual bodily harm	5386	28.4
Common assault and battery	3783	19.9
Harassment (section 2)	1825	9.6
Sending letters etc with the intent to cause stress and anxiety	839	4.4
Harassment (breach of restraining order)	789	4.2
Other criminal damage to a dwelling under £500	740	3.9
Other criminal damage, other, under £500	387	2.0
Breach of non-molestation order	313	1.6
Threats to kill	306	1.6
<i>Coercive control</i>	<i>156</i>	<i>0.8</i>
<b>Total (not including coercive control)</b>	<b>14,368</b>	<b>75.7</b>

**Table 2: Descriptive statistics for police recorded crimes of domestic abuse: most frequent offences types and coercive control from 1<sup>st</sup> January 2016-30<sup>th</sup> June 2017**

	N	Victim sex – % f <sup>a***</sup>	Perpetrator sex – % m <sup>a</sup> ***	Victim mean age <sup>a</sup> ***	Perpetrator mean age <sup>a</sup> ***	Relationship – % IP <sup>a***</sup>	Dyad – % FM <sup>a</sup> ***
Coercive Control	156	96.1 (99.4)	95.0 (77.6)	32.8 (97.5)	34.9 (75.7)	95.2 (79.5)	94.2 (76.9)
Assault occasioning actual bodily harm	5386	78.0 (99.4)	88.2 (87.9)	34.9 (94.9)	34.4 (83.6)	76.2 (75.8)	71.8 (87.4)
Threats to kill	306	86.9 (99.7)	94.0 (87.3)	35.4 (97.1)	35.3 (86.3)	81.8 (73.9)	84.7 (87.6)
Breach of non-molestation order	313	97.7 (86.3)	96.8 (90.7)	33.4 (86.0)	34.7 (77.3)	95.1 (65.5)	94.7 (77.6)
Harassment (breach of restraining order)	789	94.4 (77.3)	97.5 (92.3)	35.6 (76.0)	35.8 (70.0)	91.0 (65.1)	93.6 (71.2)
Other criminal damage to a dwelling under £500	740	84.2 (95.0)	89.1 (84.6)	38.7 (92.4)	28.2 (77.8)	57.6 (73.1)	80.6 (80.0)
Sending letters etc with intent to cause distress or anxiety	839	73.4 (99.5)	74.7 (68.9)	34.2 (96.2)	34.6 (66.1)	78.6 (67.4)	67.6 (68.8)
Common assault and battery	3783	78.6 (99.2)	79.1 (84.0)	36.2 (94.1)	34.5 (79.4)	68.7 (73.7)	72.0 (83.5)
Other criminal damage, other under £500	387	80.3 (98.4)	83.3 (82.2)	38.0 (96.9)	29.2 (80.4)	61.7 (70.8)	76.8 (81.4)
Harassment (Section 2)	1825	74.4 (99.6)	72.7 (75.0)	35.4 (96.7)	35.7 (71.0)	86.8 (64.1)	68.5 (74.7)

<sup>a</sup> percent of valid cases available for analysis shown in parentheses, \*\*\*p ≤ .001.



**Table 3: Policing responses to coercive control and most frequently occurring recorded crimes of domestic abuse**

	Risk assessment (% Gold) ***	% Arrested ***	% Solved ***
Coercive Control	42.9	46.8	16.0
Assault occasioning actual bodily harm	27.6	71.9	32.9
Threats to kill	48.7	77.1	35.0
Breach of non- molestation order	43.1	64.5	49.5
Harassment (breach of restraining order)	42.6	71.4	62.5
Other criminal damage to a dwelling under £500	15.9	50.7	35.8
Sending letters etc with intent to cause distress or anxiety	9.9	9.3	7.4
Common assault and battery	17.5	51	20.1
Other criminal damage, other under £500	13.4	45.5	31.3
Harassment (Section 2)	12.6	11.5	7.8

\*p ≤ .05. \*\*p ≤ .01. \*\*\*p ≤ .001.

**Table 4: Police outcomes for coercive control and most frequently occurring recorded crimes of domestic abuse**

	% Charged***	% NFA: Suspect identified, victim supports, CPS/Police, evidential difficulties ***	% NFA: Suspect identified, victim declines/withdraws support ***	% All other outcomes ***
Coercive Control	13.5%	30.1%	43.6%	12.8%
Assault occasioning actual bodily harm	29.5%	21.4%	39.0%	10.1%
Threats to kill	33.7%	26.8%	32.4%	7.2%
Breach of non-molestation order	46.0%	31.9%	13.1%	8.9%
Harassment (breach of restraining order)	60.1%	20.0%	13.4%	6.5%
Other criminal damage to a dwelling under £500	27.4%	9.2%	47.6%	15.8%
Sending letters etc with intent to cause distress or anxiety	5.7%	20.6%	62.7%	11.0%
Common assault and battery	17.2%	17.2%	54.2%	11.4%
Other criminal damage, other under £500	23.0%	9.3%	50.4%	17.3%
Harassment (Section 2)	5.4%	33.1%	52.1%	9.4%

\*p ≤ .05. \*\*p ≤ .01. \*\*\*p ≤ .001.

**Table 5: Coercive control cases with recorded evidence of physical violence in crime file**

	<b>N</b>	<b>% (of known)</b>
Coercive Control with physical violence evidenced	82	63%
Coercive control without evidence of physical violence	48	37%
Other/limited information available <sup>9</sup>	26	N/A
Total	156	100%

**Table 6: The recorded presence of coercive control behaviours within a random sample of Actual Bodily Harm (S. 47 Assault) crime files (n).**

<b>Recorded dynamics in Actual Bodily Harm cases</b>	<b>Intimate partner cases</b>	<b>Familial cases</b>	<b>All cases</b>
Coercive control present <sup>10</sup>	87% (40)	22% (4)	48% (44)
Behaviours do not fit coercive control	13% (6)	78% (14)	22% (20)
Unknown/Not Applicable	-	-	30% (27)
Total	100% (46)	100% (18)	100% (91)

<sup>9</sup> Due to the variability in information available, crime files with minimal information (e.g. without record of police engagement with the victim) have been incorporated into the ‘other’ category, alongside duplicated files/files recorded in error etc.

<sup>10</sup> ABH cases were coded as involving coercive control if a unidirectional course of abusive behaviour was recorded. The other cases either did not document a pattern of coercive control, or *C ft* 8, there was limited information available/an issue with the crime file.

**Table 7: Outcomes for coercive control with violence, and coercive control without (evidence of) violence**

	Risk assessed as Gold <sup>†</sup> ***	Arrested <sup>11</sup> ***	Charged/Solved*	NFA: evidential difficulties*	NFA: victim declines /withdraws support*	All other outcomes*
Coercive Control with violence	57.3 % (47)	68.3% (56)	20.7% (17)	30.5% (25)	39.0% (32)	9.8% (8)
Coercive Control without (evidence of) violence	23.4% (15)	21.9% (14)	3.1% (2)	31.3% (20)	48.4% (31)	17.2% (11)

\*p ≤ .05. \*\*p ≤ .01. \*\*\*p ≤ .001.

<sup>†</sup> Significance levels are based on based Chi-Square tests carried out using all risk assessment categories.

<sup>11</sup> All subsequent columns in this table relate to outcomes across all risk levels.