



## **PD12J: THE CORRECT APPROACH TO ALLEGATIONS OF DOMESTIC ABUSE**

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PRUDENCE BEAUMONT  
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1. This handout accompanies the Deans Court Chambers Spring Seminar Series, March 2021. The following references provide useful further reading to the issues considered within the online seminar (the titles in bold are all hyperlinked for ease of reference):
  - **Assessing Risk of Harm to Children and Parents in Private Law Cases**
2. The objective of the report was to consider: How effectively do the family courts respond to allegations of domestic abuse and other risks of harm to children and parent victims in private law children proceedings having regard to both the process and outcomes for the parties and the children?
3. The recommendations appear at pages 171 to 187 and are essential reading for family practitioners.
  - **R v P (Children: Similar Fact Evidence) [2020] EWCA Civ 1099**
4. The appeal concerns the decision to exclude evidence from proceedings in another jurisdiction relating to the father's new partner which purportedly evidenced the father's controlling behaviour in this new relationship in similar terms to that alleged by the mother in her relationship with the father.
5. Peter Jackson LJ reminds of the following points in terms of domestic abuse:

- The broad power of the court to control evidence (FPR 2010, r.22.1).
  - The admissibility of hearsay evidence in family proceedings.
  - PD12J and its definition of coercive behaviour as “*an act or a pattern or acts of assault, threats, humiliation and intimidation of other abuse which is used to harm, punish or frighten the victim*”
  - Reference to The Harm Report - the report notes that a focus on recent incidents may fail to acknowledge a pattern of behaviour over a long period of time and the failure of Scott schedules which may tend to disguise the subtle and persistent patterns of behaviour involved in coercive control, harassment and stalking.
- **F v M [2021] EWFC 4 (Fam)**
6. This case listed before Mr Justice Hayden is the remitted case of *R v P* [2020] as detailed above. The case considers two relationships in which F is the common denominator. The issue has been the admissibility of evidence in relation to the father’s more recent relationship. F conceded that the evidence was admissible for the purpose of the hearing before Hayden J.

*§5 It may be that a preliminary evaluation of the evidence before her led the Judge to conclude that it was sufficiently strong and cogent to be scrutinised in isolation. In my view, now having heard the case, I consider that it was. However, **the consideration of both “cases” together served to illuminate the sinister, domineering and, frequently, tyrannising complexion of F’s behaviour, to a degree which would not have been fully appreciated had the cases been severed. It is the chilling repetition of identical behaviours, with two very different women of different age and background, which casts evidential light and does so in each individual case.***

7. Hayden J makes extensive findings of coercive and controlling behaviour. At § 45 he highlights an extensive number of passages from the mother’s police interview which illustrate ‘*the insidious and manipulative nature of coercive and controlling behaviour*. Hayden J comments that the police interviews “*reveal both her naivety and her failure fully to grasp the nature of the abuse that I find she was subjected to. This also serves to bolster the credibility of her evidence. Though her appreciation of what has happened to her has developed as she has matured, it is still incomplete. She relates her experiences in*

*a way which reveal a complete ignorance of the paradigmatic pattern of controlling and coercive abuse she is describing.”*

8. The judgment unpicks different aspects of the controlling behaviour – controlling money and food; communication with the outside world was gradually reduced; physical restraint; and gratuitous emotional torture of M’s parents.
9. Hayden J draws attention to *A County Council v LW & Anor* [2020] EWCOP 50. A Court of Protection in which he highlights the need for vigilance when seeking to understand and identify coercive and controlling behaviour in the context of particularly vulnerable adults

*§ 60 In my judgement, it is crucial to emphasise that **key to this particular form of domestic abuse is an appreciation that it requires an evaluation of a pattern of behaviour in which the significance of isolated incidents can only truly be understood in the context of a much wider picture.** The statutory guidance published by the Home Office pursuant to Section 77 (1) of the Serious Crime Act 2015 identified paradigm behaviours. In *A County Council v LW* (supra) I emphasised the features of that guidance which struck me as particularly apposite in the context of vulnerable adults. They are strikingly relevant here [they are listed within the judgment]*

10. The second relationship is described mostly from the perspective of the Ms J’s family given her reluctance to give evidence. The judge directs the attendance of the Tipstaff at her home. The judge considers her to be an intelligent and impressive witness who refutes any suggestion that she is a victim and whilst refuses to give evidence engages in some discussions with the judge regarding the F’s merits.
11. Hayden J set out the definition of ‘coercive and controlling behaviour’ as defined in the FPR 2020, PD12J and the offence under section 76, Serious Crime Act 2015 – Controlling or coercive behaviour in an intimate or family relationship [§103-105]. He refuses to adopt the approach as suggested on behalf of Counsel for the applicant father as *‘I do consider that a tight, overly formulaic analysis may ultimately obfuscate rather than illuminate the behaviour.’*

12. The Court endorses the general approach taken to evaluating evidence expressed by Peter Jackson J (as he then was) in **Re BR (Proof of Facts) [2015] EWFC 41** and **Baker J (as he then was) in Devon County Council v EB and Others [2013] EWHC 968** and notes that the FPR when broken down provides some useful guidance.

§109 *'Key to assessing abuse in the context of coercive control is recognising that **the significance of individual acts may only be understood properly within the context of wider behaviour**. I emphasise **it is the behaviour and not simply the repetition of individual acts which reveals the real objectives of the perpetrator and thus the true nature of the abuse.**'*

13. Hayden J refuses to give guidance on the use of Scott Schedules but notes that may be of limited use when capturing the nature of coercive and controlling behaviour and notes the recommendations of the Harm report:

*"It is, I hope, clear from my analysis of the evidence in this case, that **I consider Scott Schedules to have such severe limitations in this particular sphere as to render them both ineffective and frequently unsuitable**. I would go further, and **question whether they are a useful tool more generally in factual disputes in Family Law cases**. The subtleties of human behaviour are not easily receptive to the confinement and constraint of a Schedule. I draw back from going further because Scott Schedules are commonly utilised and have been given much judicial endorsement. I do not discount the possibility that there will be cases when they have real forensic utility. Whether a Scott Schedule is appropriate will be a matter for the judge and the advocates in each case unless, of course, the Court of Appeal signals a change of approach."*

- **The Transparency Project reporting of the CoA conjoined appeals in January 2021**
- **Review of the Controlling or Coercive Behaviour Offence**
- **Our Treatment of the Vulnerable – Challenges for the Family Justice System**

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