



Criminalising post-separation (economic) abuse

He can't physically get me, he can't emotionally hurt me, and yet still, economically he can cripple me.¹

Surviving Economic Abuse (SEA) is the only UK charity dedicated to raising awareness of and transforming responses to economic abuse. Our work is informed by 'Experts by Experience' – a group of women who speak openly about what they have gone through so that they can be a force for change. SEA led on economic abuse being included within the statutory definition of domestic abuse in the Domestic Abuse Bill. While welcoming this recognition of economic abuse, SEA is concerned to ensure that the Bill addresses other aspects of government policy which undermine this recognition.

Summary

SEA with the support of SafeLives and others is calling for an amendment to the Domestic Abuse Bill to include post-separation abuse in the offence of controlling or coercive behaviour. While the legislation on stalking and harassment covers some aspects of post-separation abuse it does not cover the full range of abuse, particularly economic abuse, that continues after a victim has left an abuser. The current position is inconsistent with the definition of domestic abuse in the Domestic Abuse Bill. Coercive control continues post separation and victims are most at risk of homicide in this period. Given that economic abuse does not require physical proximity it can continue, escalate or even begin after separation, creating a significant barrier for victims seeking to rebuild their lives.

Including post-separation abuse within the controlling or coercive behaviour offence

The Serious Crime Act 2015 makes controlling or coercive behaviour in an intimate or family relationship a crime. In order to fall within the offence, the behaviour must have taken place at a time when the perpetrator and victim were 'personally connected' (section 76(1)(b)).

¹ Sharp-Jeffs, N. (2015) *Money Matters: Research into the extent and nature of financial abuse within intimate relationships in the UK*. London: The Co-operative Banks/Refuge

Two people will be considered as 'personally connected' where either a) they are in an intimate relationship with each other or b) they live together and are either family members or have previously been in an intimate relationship with each other. This means that where two individuals are no longer in an intimate relationship with each other and they do not live together, behaviour by one of them towards the other cannot fall within the offence of controlling or coercive behaviour.

This position ignores the fact that coercive control extends beyond separation and that particular forms (such as economic abuse) do not require physical proximity nor the continuation of an intimate relationship to perpetrate. Furthermore it is inconsistent with the definition of domestic abuse in the Domestic Abuse Bill, in which the definition of 'personally connected' does not require individuals to be in an ongoing relationship or living together (clause 2).

SEA's analysis of successful prosecutions of the controlling or coercive behaviour offence shows that six in ten involve economic abuse.² Research shows that coercive control, particularly in this form, continues after the victim's relationship with the perpetrator has ended and they are no longer living together. Economic abuse can continue or escalate after a couple separates. It can also start post-separation, when the opportunity to continue other forms of controlling behaviour have been removed and when controlling a former partner's access to economic resources may be the only way left to exert control. As SEA highlighted in its response to the consultation on the introduction of the coercive control offence, 'Abusive men will find ways to maintain dominance over their partners, even without physical proximity (Stark, 2007) and including through economic abuse (Sharp, 2008)'.³

Indeed research into economic abuse has shown that economic abuse is more prevalent post-separation: one in four women and one in five men.⁴ The ways in which economic abuse can continue, escalate or even begin as a form of coercive control include:

- spending money from a victim's personal bank account or from a joint account;
- running up bills in the victim's name;
- prolonging the sale of joint property;
- damaging or stealing personal property;
- interfering with the victim's employment and their ability to keep their job;
- refusing to pay child maintenance; and
- continuously taking the victim to court resulting in financial costs

² Surviving Economic Abuse. (2017) *Into Plain Sight: how economic abuse is reflected in successful prosecutions of coercive or controlling behavior*. This figure is consistent with our ongoing analysis of such prosecutions where currently 117 out of 184 involve economic abuse.

³ Surviving Economic Abuse, response to Home Office consultation *Strengthening the Law on Domestic Abuse*, 2014

⁴ Sharp-Jeffs, N. (2015)

Stalking and harassment

The government acknowledges in the consultation response it published alongside the Bill that respondents 'wanted the offence to recognise that abuse can happen even after the relationship has ended or partners have separated'.

Responses called for economic abuse to be recognised as part of controlling or coercive behaviour, as well as abuse perpetrated through the courts system and through child contact arrangements, all of which can occur post-separation. This would also help to highlight and recognise the impact of controlling or coercive behaviour on children.⁵

The government commits to updating the statutory guidance and CPS legal guidance for the controlling or coercive behaviour offence so that it will include:

- *economic abuse, and how this form of abuse can manifest itself as part of coercive control [and]*
- *a guide to how abuse can be perpetrated through both the criminal and family court systems, including through child contact arrangements⁶*

It goes on to state that abuse perpetrated by an ex-partner who no longer lives with the victim is captured under existing legislation on stalking and harassment. Recognising however that the relationship between the coercive control offence and stalking is not well understood, the government undertakes to issue statutory guidance on Stalking Protection Orders to ensure that domestic abuse victims are protected after a relationship has ended.

On the basis of research and practice evidence, SEA contends that this legislation is not a good fit for economic abuse since it does not adequately address this form of abuse. This is because the stalking offence constitutes: a course of conduct which amounts to stalking and which causes the victim to fear on at least two occasions that violence will be used against her, or causes serious alarm or distress which has a substantial adverse effect on her usual day-to-day activities. This does not cover the kinds of economic harm commonly experienced by women following separation, and neither do the examples of the offence given in the legal guidance.⁷

While stalking and harassment crimes focus on the intention to cause fear, alarm and distress, economic abuse both during and after a relationship links more closely to control, such as through denying access to money and interfering with or sabotaging a woman's economic stability and thereby her capacity to rebuild her

⁵ *Transforming the Response to Domestic Abuse: Consultation Response and Draft Bill*, January 2019

⁶ *Transforming the Response to Domestic Abuse: Consultation Response and Draft Bill*, January 2019

⁷ <https://www.cps.gov.uk/legal-guidance/stalking-and-harassment>

life.⁸ Therefore economic abuse post-separation does not fit within the stalking and harassment legislation. Instead it should sit within the offence of controlling or coercive behaviour. For instance, a common experience of post-separation economic abuse which would fall outside of the stalking legislation is the deliberate non-payment of a joint mortgage to the point of repossession. This represents ongoing economic control, sabotage of an economic asset and creating economic instability resulting in homelessness.⁹

The negative impact of economic abuse continuing, escalating or even starting after separation are long-lasting and, in many cases, last a lifetime. It is not uncommon for survivors to be left paying back negative equity, creating insurmountable barriers for staying on the property ladder and accessing safe and secure housing moving forward due to ruined credit ratings.

The impact is practical in not being able to get a mortgage – he has left such a mark on my credit rating, I can't get any credit... you can't move on – a brick wall.

SEA recommends that section 76 of the Serious Crime Act 2015 be amended to include post-separation abuse. The proposed amendment is at Annex A.

The proposed amendment removes the requirement to live together in the case of family members as well as intimate partners, in line with the new definition of domestic abuse. A briefing/case study on post-separation abuse experienced by family members will be provided separately.

Compensation for economic abuse

It is important that victims of economic abuse are restored or compensated for the money and other economic assets that they have been unlawfully deprived of, and the perpetrator prevented from using or dissipating these assets any further. Where economic abuse takes the form of criminal damage (for example, the destruction of property) then remedial measures can be taken through the court ordering the perpetrator to pay compensation. Yet for victims who are left in debt, for example, there is no straightforward method of ensuring economic redress.¹⁰ The economic harm victims experience can be severe and long-lasting as already explained.

⁸ Surviving Economic Abuse. (2018) *Economic abuse is your past, present and future* – a report on the practical barriers women face in rebuilding their lives after domestic abuse

⁹ Surviving Economic Abuse. (2018) *Economic abuse is your past, present and future*

¹⁰ This is only considered as an aggravating factor in sentencing, see the Sentencing Council's Definitive Guideline for Intimidatory Offences in 2018, which includes the victim being 'left in debt, destitute or homeless' as an aggravating factor for the coercive control offence.

Since the Bill recognises for the first time that economic abuse is a distinct construct which causes economic harms, this understanding must be consistently reflected in the implementation of relevant legislation.

Economic abuse must also come under the scope of mechanisms of redress within the criminal justice system.

SEA recommends that the confiscation provisions of the Proceeds of Crime Act 2002 be used to recover assets and compensate victims of economic abuse in cases of coercive control. Confiscation involves an investigation by the police through which the benefit from criminality is calculated and an equivalent amount is returned. The main aim of confiscation is to protect and recover assets so that they can then be used to compensate victims where appropriate.¹¹ A confiscation investigation is mandatory for certain offences classified as 'criminal lifestyle' offences, which include such crimes as drug trafficking and money laundering.¹² Even where no criminal lifestyle is found, a confiscation order may be made requiring the offender to pay the monetary value connected with offences they are convicted of and any other offences taken into consideration.

Use of these provisions will send out a strong signal to perpetrators that they will be held accountable for economic abuse. It will also convey the important message to victims that, alongside proceedings for coercive control, they can also expect financial compensation. Not only does this provide a more holistic response but also a stronger incentive to leave an abuser. Economic abuse is the primary barrier to leaving an abuser and the reason why many victims return. Survivors report that being left with large debts makes it impossible to move on from abuse and have the economic stability required to access essentials for themselves and their children (such as food, housing and transport):¹³

I had a secondary card – he depleted the joint account, so I was liable and stopped paying for the housing, sold everything, then my child and I were homeless.

SEA recommends the use of the Proceeds of Crime Act 2002 to compensate victims of the controlling or coercive behaviour offence, and that this be included in the statutory and CPS guidance on the offence.

A separate offence of economic abuse

In addition to recognising economic abuse as a form of ongoing coercive control, SEA believes that many of the problems linked to limited recognition and

¹¹ College of Policing Authorised Professional Practice, *Investigation: confiscation and recovery*: <https://www.app.college.police.uk/app-content/investigations/investigative-strategies/financial-investigation-2/asset-recovery/confiscation-and-recovery/>

¹² Section 75, Proceeds of Crime Act 2002

¹³ Surviving Economic Abuse. (2018) *Economic abuse is your past, present and future*

prosecution of economic abuse, and redress for it, could be overcome **by introducing a separate offence of economic abuse**. This would cater for the specificities of the behaviour and reflect the lived realities of victims, as is the case in Tasmania, Australia, through section 8 of the Family Violence Act 2004¹⁴:

Economic abuse

A person must not, with intent to unreasonably control or intimidate his or her spouse or partner or cause his or her spouse or partner mental harm, apprehension or fear, pursue a course of conduct made up of one or more of the following actions:

- (a) coercing his or her spouse or partner to relinquish control over assets or income;*
- (b) disposing of property owned –
 - (i) jointly by the person and his or her spouse or partner; or*
 - (ii) by his or her spouse or partner; or*
 - (iii) by an affected child –
without the consent of the spouse or partner or affected child;**
- (c) preventing his or her spouse or partner from participating in decisions over household expenditure or the disposition of joint property;*
- (d) preventing his or her spouse or partner from accessing joint financial assets for the purposes of meeting normal household expenses;*
- (e) withholding, or threatening to withhold, the financial support reasonably necessary for the maintenance of his or her spouse or partner or an affected child.*

SEA recommends that economic abuse be made a stand-alone criminal offence.

October 2019

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¹⁴ Douglas, H. (2015) *Do we need a specific domestic violence offence?* 39 (2) Melbourne University Law Review 434-471

ANNEX A

Suggested Amendment to Section 76, Serious Crime Act 2015

XX Controlling or coercive behaviour offence

- (1) In Part 5 (protection of children and others) of the Serious Crime Act 2015, Section 76 (controlling or coercive behaviour in an intimate or family relationship) is amended as follows.
- (2) In subsection (2)(a)-
 - (a) after the words "A is" insert the words "or has been";
 - (b) substitute subsection (2)(b) with "A and B are members of the same family."
- (3) In subsection (6), for "(2)(b)(i)" substitute "(2)(b)".

Existing Section 76

- (2) A and B are "personally connected" if—
 - (a) A is in an intimate personal relationship with B, or
 - (b) A and B live together and—
 - (i) they are members of the same family, or
 - (ii) they have previously been in an intimate personal relationship with each other.
- (6) For the purposes of subsection (2)(b)(i) A and B are members of the same family if—
 - (a) they are, or have been, married to each other; ...
 - (c) they are relatives; ...

Section 76 as amended

- (2) A and B are "personally connected" if—
 - (a) A is or has been in an intimate personal relationship with B, or
 - (b) A and B are members of the same family.
- (6) For the purposes of subsection (2)(b) A and B are members of the same family if— ...