



Mental Capacity and Coercive Control

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Domestic Homicide Review (DHR) Leah recommended that guidance was produced for practitioners on the relevance and use of the Mental Capacity Act in cases involving coercive control and its possible impact on executive functioning. Leah was a woman who died by suicide in 2020 following domestic abuse from a partner.

WHAT IS COERCIVE CONTROL

- **Coercive behaviour** is an act or a **pattern of acts** of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.
- **Controlling behaviour** is a **range of acts** designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.¹

The Serious Crime Act Section 76 states:

(1) A person (A) commits an offence (of “controlling or coercive behaviour in an intimate or family relationship”) if:

- (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.”

Evan Stark (2009) describes coercive control as ‘invisible in plain sight’, and that perpetrators using coercive control “constricted the victim’s decision-making powers (and, in some cases, prohibited all independent decisions)”.

UNDUE INFLUENCE

Dr Susan Benbow ([Older Minds Matters](#)), the author of DHR Leah, suggests that it is useful to think about the concept of ‘undue influence’ when considering capacity and coercive control. The concept of undue influence has been recognised in England for centuries. A legal judgement described it as follows: “The objective is to ensure that the influence of one person over another is not abused”.²

¹ <https://www.cps.gov.uk/legal-guidance/controlling-or-coercive-behaviour-intimate-or-family-relationship>

² [House of Lords - Royal Bank of Scotland v. Etridge \(AP\) \(parliament.uk\)](#)

In English law there are 2 forms of undue influence:³

- a. "Overt **acts** of improper pressure or coercion, such as unlawful threats"
- b. "A **relationship** where one has acquired over another a measure of influence or ascendancy of which the ascendant person then takes unfair advantage... Without any specific acts of coercion".

Undue influence in relation to decisional capacity

- Capacity looks at the **current** state of functioning in relation to a decision.
- Undue influence involves a **process** that takes place over time and whether an individual is exerting pressure on someone's decision-making using "unfair tactics that result in a loss to the victim".
- Undue influence is coercion; pressure so as to overpower the volition without convincing the judgment; see Hall v Hall (1868) LR 1 P & D 481⁴ (a Probate case).
- The impact of undue influence is affected by:
 - Victim vulnerability
 - The influencer's apparent authority
 - The actions/ tactics used by the influencer
 - Equity of the result

LEARNING FROM RESEARCH

In 2005 an article by Brandl et al⁵ looked at the parallels between undue influence, domestic violence, stalking and sexual assault. It describes situations where:

- "... the perpetrator overcomes the free will of the victim and then substitutes his or her judgment for that of the victim."

It goes on to argue that the key parallel between undue influence and domestic abuse/ coercive control is that they both consist of patterns of tactics used over time. It concludes that:

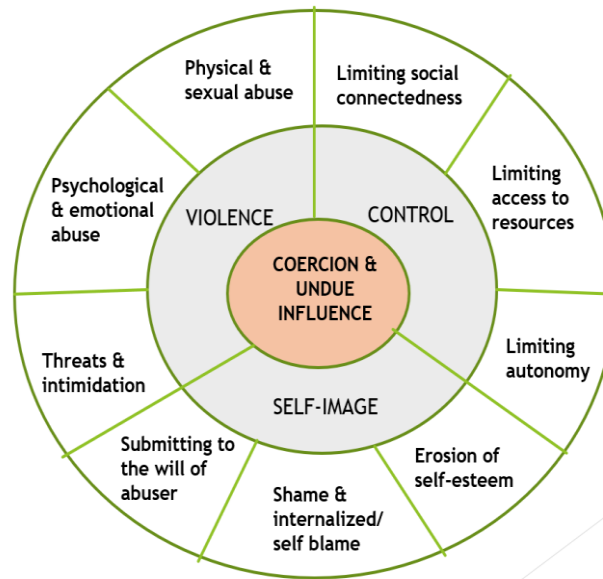
- "*The traditional framework for evaluating consent, the role of capacity, and client self-determination may need to be reframed*".

Using this research and the example of DHR Leah, Dr Benbow illustrates the factors at work in undue influence and coercive control in the diagram below:

³ Ibid

⁴ [Undue influence Definition | Legal Glossary | LexisNexis](#)

⁵ <https://pubmed.ncbi.nlm.nih.gov/16931468/>



MENTAL CAPACITY

Mental Capacity Act 2005⁶

For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time they are **unable to make a decision** (which would indicate **a disturbance in the functioning of the mind or brain**) to the matter because the person is not able to:

- (a) to understand the information relevant to the decision,
- (b) to retain that information,
- (c) **to use or weigh that information as part of the process of making the decision**, or
- (d) to communicate his decision (whether by talking, using sign language or any other means).

If it is reasonable to suspect the person has an impairment of, or a disturbance in the functioning of, their mind or brain due to not being able to do one or more of (a), (b), (c) or (d) above, further consideration needs to be given as to if the impairment or disturbance mean that the person is unable to make a specific decision when they need to. If that is the case, then the MCA would suggest this person lacks the mental capacity to consent to that specific decision at that specific time.

All assessments of someone's decision making ability under the MCA **MUST** be documented.

Impairments and disturbances

Can include:

- Mental, behavioural & neurodevelopmental disorders
- Schizophrenia

⁶ <https://www.legislation.gov.uk/ukpga/2005/9/introduction>

- Mood disorders
- Anxiety or fear-related disorders
- Disorders specifically associated with stress.
- Disorders due to substance use or addictive behaviours.
- Personality disorders
- Impact of strokes or traumatic brain injury.

Mental health and domestic abuse

Research has found a strong association between exposure to domestic abuse from a partner (intimate partner violence) and mental illness – there is a ‘significantly higher’ likelihood of having mental illness where people have experienced domestic abuse from a partner.⁷ There is also a heightened risk of suicidality⁸.

Coercive Control, undue influence and mental capacity

Coercive control and undue influence are both patterns of tactics used over time. The tactics used by the Leah’s perpetrator over a period of up to three years included:

- Cancelling her appointments (e.g. medical or support related)
- Controlling her medication
- Reproductive coercion (e.g. controlling or withholding contraception)
- Restricting her access to friends and family unless he was present.
- Threatening self-harm to stop her doing things e.g., ending the relationship.
- Physical and sexual abuse
- Jealousy and possessiveness
- Emotional and psychological abuse

Combined with the perpetrator’s coercive control Leah already had some vulnerabilities. Leah had had contact with mental health services prior to being in a relationship with him. She had been given a diagnosis of “emotionally unstable personality disorder” and “generalised anxiety disorder”. She had previous domestically abusive relationships and had taken overdoses in the past. Her family felt she had an alcohol problem (bingeing).

It is likely that the coercive and controlling behaviour was acting as ‘undue influence’ on Leah and was also impacting on her mental health, resulting in a reduced capacity to make decisions that were in her best interests. The combination of these factors led to Leah not being able to see a way out of the abusive relationship. Leah did not accept the support that was offered and ultimately took her own life, maybe because she saw suicide as an alternative way out of the abusive situation.

⁷ J. S. Chandan, T. Thomas, C. Bradbury-Jones, R. Russell, S. Bandyopadhyay, K. Nirantharakumar, et al. (2020). The British Journal of Psychiatry 217 (4): 562-567

⁸ <https://nspa.org.uk/resource/domestic-abuse-and-suicide-exploring-the-links/>

Dr Benbow states that: *decision-making ability is often compromised in situations of coercive control/ undue influence. In making a decision “a preferred option or a course of actions is chosen from among a set of alternatives based on certain criteria.”*⁹

Coercive control:

- *Undermines confidence in ability to make decisions.*
- *May restrict access to information.*
- *Biases the weighing up of information e.g. the victim may make seemingly unwise choices based on the threats by the perpetrator: ‘I’ll kill myself’, ‘I’ll make sure they take away the children/ grandchildren’.*

What can we do if we think that coercive control is impacting on someone’s capacity to make decisions?

It may appear that the victim / survivor whose decision making is impacted by coercive control is ‘hard to engage’, or ‘making poor decisions’. It is important to take a trauma informed approach.

- Think about why they may be finding support hard to accept
- Don’t be judgemental.
- Keep offering support but in a way that offers them control and choice. They may need to take small steps.
- Disrupt the perpetrator – e.g., with measures such as Domestic Violence Protection Orders (DVPOs). These are intended to: provide “protected space to explore the options available to them and make **informed decisions** regarding their safety”. Currently only the Police can apply for DVPOs. Meetings such as MARACs can advocate for the use of DVPOs for specific victims.
- Share information with relevant agencies to help keep the victim safe.
- Consider the persons executive function,¹⁰ the set of skills that allow us to live independently and do our daily activities, when undertaking capacity assessments. Are they able to do what they say they can do to keep themselves safe?
- Use the DASH with the victim if possible. But use your professional judgement and refer to MARAC if you think they may be at high risk of serious harm or homicide.
- Does the person have care and support needs and is there abuse or neglect or suspected abuse or neglect present? If so please raise a safeguarding concern using the process described [at Sheffield Adult Safeguarding Partnership - \(sheffieldasp.org.uk\)](https://www.sheffieldasp.org.uk)
- Safeguarding concerns are received by First Contact, screened and where there is abuse or neglect these are progressed by staff within the Multi Agency Safeguarding Hub (within First Contact). You can request to join a MASH Huddle by contacting adultMASH@sheffield.gov.uk

USEFUL RESOURCES

⁹ The Cognitive Process of Decision Making. Wang, Y., Ruhe, G. International Journal of Cognitive Informatics and Natural Intelligence; Vol. 1, Iss. 2, (Apr-Jun 2007): 73-75,77-85.

¹⁰ [What are executive functions? - Resource Library - Sheffield Children's NHS Foundation Trust \(sheffieldchildrens.nhs.uk\)](https://www.sheffieldchildrens.nhs.uk)

[Guidance sheet two Mental capacity and coercion.pdf \(ripfa.org.uk\)](#) Dr Lindsey Pike, RiPFA (2016)

This briefing considers how practitioners determine if someone experiencing coercion has the mental capacity to make decisions related to their living arrangements and contact with the alleged perpetrator.

It describes 3 situations of coercive control of **people with care and support needs**:

1. Where the person has impairment of mind or brain, and this raises questions about decision-making capacity related to safety.
2. Where the person has no impairment of mind or brain, but levels of coercive control are so high that decision-making may be affected.
3. Where someone with an impairment of mind/ brain is also experiencing coercive control: capacity may be impaired by the mental impairment, or the coercion, or both.

MORE INFORMATION?

Attend a training session on Coercive Control or Domestic Abuse and Mental Health by IDAS. Go to <https://courses.idas.org.uk/> for dates or enquire about a group session for your team.

Sheffield Domestic Abuse Helpline 0808 808 2241

www.idas.org.uk