
Domestic Abuse and Covid-19: The Legal Challenges

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Abstract

At a time when the home is presented as a place of safety in the face of Covid-19, there are major concerns that forced confinement is exacerbating the risks posed to victims of domestic abuse. Increased isolation, coupled with more limited opportunities to seek support, are presenting unprecedented challenges for victims and for the law in responding to domestic abuse. This paper takes as its focus these legal challenges, focusing particularly on the situation in the UK. It opens by addressing the implications for domestic abuse victims of the restrictions in movement. It then assesses the capacity of the criminal offence of coercive or controlling behaviour to respond to the rise in domestic abuse. It also explores the recent move to remote hearings within the family justice system, and associated access to justice concerns.

Key words

Coercive control – remote hearings – access to justice – participation

I. Introduction

The increase in domestic abuse in response to Covid-19 has been described as the 'shadow pandemic'.¹ In the UK, it has been reported that fourteen women and two children were killed in the first three weeks of the lockdown.² Calls to Refuge's domestic abuse helpline rose by 25%,³ with a 120% increase in calls and contacts in a single day following media coverage of the support available.⁴ Traffic to Refuge's website also increased by 700%.⁵ Despite these statistics, Covid-19 is not the cause of the rise in domestic abuse. Responsibility for domestically abusive behaviour belongs solely to the perpetrator. Nevertheless, the pandemic appears to be aggravating pre-existing domestically abusive behaviours and posing barriers to victims accessing safety.

The home has never been a place of sanctuary for victims of domestic abuse, and domestic abuse has always posed unique challenges for the law. With domestic abuse being both a matter of intense public concern and taking place predominantly in private, the role of the law in responding to domestic abuse is complex. The pandemic has brought

¹ UN Women, 'Press Release: UN Women Raises Awareness of the Shadow Pandemic of Violence Against Women During COVID-19,' 27 May 2020, <https://www.unwomen.org/en/news/stories/2020/5/press-release-the-shadow-pandemic-of-violence-against-women-during-covid-19>.

² 'Domestic Abuse and Risks within the Home,' accessed 12 June 2020, <https://publications.parliament.uk/pa/cm5801/cmselect/cmhaff/321/32105.htm>.

³ Refuge, '25% Increase in Calls to National Domestic Abuse Helpline Since Lockdown Measures Began,' 6 April 2020, <https://www.refuge.org.uk/25-increase-in-calls-to-national-domestic-abuse-helpline-since-lockdown-measures-began/>.

⁴ Refuge, 'Refuge Sees Calls and Contacts to National Domestic Abuse Helpline Rise by 120% Overnight,' 9 April 2020, <https://www.refuge.org.uk/refuge-sees-calls-and-contacts-to-national-domestic-abuse-helpline-rise-by-120-overnight/>.

⁵ Refuge, 'Refuge Sees Online Traffic to its National Domestic Abuse Helpline Rise by 700%,' 9 April 2020, <https://www.refuge.org.uk/refuge-sees-700-increase-in-website-visits/>.

the dangers posed by the home, and the challenges facing the law, into even sharper focus, as well as shedding further light on the cracks within existing legal structures.

This paper explores the challenges in responding to domestic abuse in the light of Covid-19. It starts by addressing the implications of the restrictions on movement brought about by the lockdown for victims of domestic abuse. It moves on to explore the potential for the criminal offence of coercive and controlling behaviour to respond to a rise in the perpetration of abuse. It then turns to access to civil law protection and family proceedings in the light of the court system having moved online at unprecedented speed, and associated access to justice concerns. It highlights the action that needs to be taken urgently in response to the current pandemic and argues for long-term reform of the law's treatment of domestic abuse.

II. Restrictions on Movement

The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 introduced extraordinary restrictions on movement. Whilst we are now seeing a relaxation of these restrictions, movement continues to be regulated, social distancing measures look set to be the “new normal” for some time and there remains the possibility of a second wave of the virus, which could cause the re-introduction of the tightest controls. The risks posed by these restrictions for victims experiencing domestic abuse need little articulation. Women's Aid has warned that ‘social distancing and self-isolation will be used as a tool of coercive and controlling behaviour by perpetrators’.⁶ Victims might be unable to work, or have to work from home, losing the face-to-face support that may be provided by employment, as well as having more limited opportunities to leave the home. Access to support networks are likely to be restricted. If victims and perpetrators are living together, perpetrators' physical presence in the home will be intensified if they are unable to work or are working from home. As the lockdown eases, there is also the risk of abuse escalating, as perpetrators resist the loss of control.

Even at the point of the strictest restrictions on movement, victims have always been permitted to leave their homes to seek safety and engage with protective services.⁷ It hardly needs to be said, however, that the opportunity to seek support is by no means the same as actually being able to access that support, and the current pandemic has further exposed the underfunding of the infrastructure needed to support victims of abuse. Refuge and outreach services were facing a funding crisis prior to the pandemic.⁸ Emergency funding is being made available,⁹ but this needs to be sustained. The consequences of the restrictions in access to legally aided representation brought about by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 also continue to cut deep. Whilst legal

⁶ Women's Aid, ‘The Impact of COVID-19 on Women and Children Experiencing Domestic Abuse, and the Life Saving Services that Support Them,’ 17 March 2020, <https://www.womensaid.org.uk/the-impact-of-covid-19-on-women-and-children-experiencing-domestic-abuse-and-the-life-saving-services-that-support-them/>.

⁷ See in particular Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, reg 6(2)(h), (i) and (m) (as originally enacted).

⁸ See for example, Women's Aid, ‘Funding Crisis for Domestic Abuse Sector with 64% of Refuge Referrals Denied,’ 28 January 2020, <https://www.womensaid.org.uk/funding-crisis-for-domestic-abuse-sector-with-64-of-refuge-referrals-declined/>.

⁹ Ministry of Housing, Communities & Local Government and Luke Hall MP, ‘Over 100 Frontline Domestic Abuse Charities Given Government Funding,’ 5 June 2020, <https://www.gov.uk/government/news/over-100-frontline-domestic-abuse-charities-given-government-funding>.

aid was retained for cases involving domestic abuse, the means test and evidence requirements have, in practice, severely restricted access to legally aided representation.¹⁰ The ability of victims to access the evidence required to qualify for legal aid is likely to be further limited during the period of the lockdown, with it being harder to access, for example, physician support. This will impact the availability of legal representation in proceedings such as child arrangements disputes. The Law Society has called for the provision of non-means tested legal aid, as well as relaxations in the evidence gateway to allow solicitors to identify abuse victims.¹¹

It is well-known that victims of domestic abuse very often do not report abuse. Whilst there are reports of an increase in abuse during the period of the pandemic, it is also likely that much abuse is going unreported. For victims who come forward, the importance of a well-funded and comprehensive network of support is abundantly clear. This is particularly so given that separation is often the trigger for the escalation of abuse,¹² and the point at which the victim tries to leave is when they are at heightened risk of serious injury or death.¹³ There is no room for the law to fall short in providing a range of accessible and robust protections. This paper now turns to the protections afforded by the current legal framework.

III. Responding to an Increase in Coercive and Controlling Behaviour – the Serious Crime Act 2015

Section 76 of the Serious Crime Act 2015 criminalised patterns of controlling and coercive behaviour for the first time. The significance of the new offence was that it was intended to move the law away from a focus on the perpetration of specific incidents of violence to recognise the cumulative harm caused by domestic abuse, and in particular of non-physical forms of abuse. As outlined below, the offence is likely to be of particular significance during the current pandemic in the light of the increased opportunities for the perpetrator to exert power and control.

The national picture of the implementation of the offence does not point to a transformational shift in the criminal law's response to domestic abuse. The conviction rate has been consistently low, and average custodial sentences have been significantly below the maximum five year term.¹⁴ Whilst still low, the most recent figures suggest that

¹⁰ See recently, Public Law Project, 'Domestic Violence: Challenge to Legal Aid Means Regulations,' 10 June 2020, https://publiclawproject.org.uk/latest/domestic-violence-challenge-to-legal-aid-means-regulations/?utm_source=rss&utm_medium=rss&utm_campaign=domestic-violence-challenge-to-legal-aid-means-regulations. See also Joanna Harwood, 'We Don't Know What It Is We Don't Know': How Austerity Has Undermined the Courts' Access to Information in Child Arrangements Cases Involving Domestic Abuse,' (2019) 31(4) *Child and Family Law Quarterly* 321.

¹¹ Law Society, 'COVID-19 Lockdown Puts Domestic Abuse Victims at Risk,' 8 April 2020, <https://www.lawsociety.org.uk/news/press-releases/coronavirus-covid-19-lockdown-puts-domestic-abuse-victims-at-risk/>.

¹² See for example, Maddie Coy et al., *Picking Up the Pieces: Domestic Violence and Child Contact* (London: Rights of Women, 2012), 27.

¹³ See for example, Julia Long, Keshia Harper and Heather Harvey, *The Femicide Census 2017 Findings: Annual Report on UK Femicides 2017* (London: Women's Aid 2018), 9.

¹⁴ Office for National Statistics, 'Domestic Abuse in England and Wales: Year Ending March 2018,' 22 November 2018, 12 and 40; Office for National Statistics, 'Domestic Abuse and the Criminal Justice System, England And Wales: November 2019,' 25 November 2019, 26.

prosecutions and convictions are increasing year on year.¹⁵ It is possible, therefore, that we will continue to see higher conviction rates as the offence becomes more embedded into professional practice.

Research pre-dating the pandemic highlighted the potential for the offence to capture a range of behaviours that might not have fallen within the then-existing offences prior to the reform.¹⁶ These behaviours included economic abuse, the use of digital surveillance technologies, isolation tactics and deprivation, including denying access to medication, telephone and internet usage.¹⁷ The current pandemic creates an environment in which these forms of abusive behaviour are likely to intensify, in particular in relation to surveillance and isolation. For example, victims who are shielding may have to rely on the perpetrator for access to medication and food. There are risks that perpetrators will deny access to medical treatment to victims who become unwell. Opportunities for the perpetrator to restrict access to the telephone and internet are likely to be higher if both parties are confined to the home during a period of lockdown. There are also emerging concerns surrounding perpetrators using remote hearings as a weapon, as well as perpetrators being able to isolate further their victims. Indeed, 67% per cent of respondents to Women's Aid's recent Survivor Survey reported that the abuse experienced has worsened since the outbreak of Covid-19 and 72% reported the perpetrator exerting greater control over their lives.¹⁸

The importance of the "coercive control" offence is clear, but much of its effectiveness inevitably rests on the evidence available to support prosecutions, and the lockdown measures are likely to impact the collection of that evidence. Crown Prosecution Service guidance pre-dating the pandemic emphasises the need to focus on the 'wider pattern of behaviour' and its 'cumulative impact', with examples of relevant evidence including text messages, records of interaction with support services, witness testimonies, GPS tracking and victims' diaries.¹⁹ The challenge for the law has always been that non-physical forms of abuse are less visible than physical violence. The current lockdown presents risks that patterns of coercive and controlling behaviour will become even less visible. The restrictions on day-to-day movement could result in abuse becoming more confined to the home, with the perpetrator changing the strategies used to exert power and control. In response, practical measures are emerging to support victims' collection of evidence. The 'Bright Sky' app offers a secure platform on which victims can log diary entries, without these being saved on the device itself.²⁰ Police forces are encouraging neighbours and workers visiting houses to be alert to domestically abusive behaviour.²¹

¹⁵ Office for National Statistics, 'Domestic Abuse and the Criminal Justice System, England And Wales: November 2019,' 25 November 2019, 26.

¹⁶ Charlotte Barlow, Kelly Johnson, Sandra Walklate and Les Humphreys, 'Putting Coercive Control into Practice: Problems and Possibilities,' (2020) 60 *British Journal of Criminology* 160.

¹⁷ *Ibid*, 168.

¹⁸ Women's Aid, 'Survivors Say Domestic Abuse is Escalating Under Lockdown,' 28 April 2020, <https://www.womensaid.org.uk/survivors-say-domestic-abuse-is-escalating-under-lockdown/>.

¹⁹ Crown Prosecution Service, 'Coercive or Controlling Behaviour in an Intimate or Family Relationship,' last modified 30 June 2017, <https://www.cps.gov.uk/legal-guidance/controlling-or-coercive-behaviour-intimate-or-family-relationship>. See also, Home Office, 'Controlling or Coercive Behaviour in an Intimate or Family Relationship: Statutory Guidance Framework,' December 2015.

²⁰ <https://www.hestia.org/brightsky>, accessed 12 June 2020.

²¹ See for example, Cumbria Police, 'Police Appeal to Neighbours and Workers to Help Victims of Domestic Abuse,' 25 March 2020, <https://www.cumbria.police.uk/News/News-Articles/2020/March/Police-appeal-to-neighbours-and-workers-to-help-victims-of-domestic-abuse.aspx>.

The evidential problem is even more acute given that research has highlighted pre-existing problems with police responses to coercive and controlling behaviour. The findings from Barlow et al's study into the use of the coercive control offence by one police force in the North West of England, based on data from 2016-17, highlighted a series of failings.²² In common with the national picture, use of the offence was limited, due in part to 'missed opportunities' to identify and investigate patterns of coercive and controlling behaviour.²³ Police officers were found to focus on specific incidents and place their emphasis on the existence of 'hard' evidence, such as photographic evidence, which in turn impacted case outcomes.²⁴ Victims' accounts were minimised, seen as 'one word against the other', and 'unverifiable' or 'weak' as a result.²⁵ Cases involving physical violence were 'significantly more likely' to be classified as high risk than those without.²⁶

The conclusion from this research conducted prior to the current pandemic was that further funding and training are needed to support the implementation of the offence at 'all points of contact within the criminal justice process – from call handlers, up to and including the Crown Prosecution Service'.²⁷ As awareness grows of the long-term economic impact of the pandemic, the risk now is whether responses to coercive and controlling behaviour are likely to improve during a period of increased budgetary constraints. The challenge, moving forward, is going to be to maintain pressure on the importance of funding and training at a time when resources are likely to be limited. Training and guidance to achieve a shift from the focus on specific incidents to patterns of abusive behaviour must also take into account the impact of the lockdown measures on the evidence available. The criminal offence is one arm of the law's protection against domestic abuse, and we turn now to the accessibility of civil law remedies and family proceedings in the light of the shift to remote hearings.

IV. Access to Civil Law Protection and Family Proceedings – the Shift to Remote Hearings

The Family Law Act 1996 houses two principal remedies: occupation orders and non-molestation orders, both of which are accessed through the family court. Occupation orders can remove the perpetrator from the home and the surrounding area.²⁸ Non-molestation orders prohibit the perpetrator from 'molesting' the victim.²⁹ Prior to the lockdown, remote hearings were not a regular occurrence within family justice proceedings. In response to Covid-19, access to these remedies, along with other family proceedings, moved online at unprecedented speed.

²² The data were collected in two stages between January 2016 and June 2017. See, Barlow, Johnson, Walklate and Humphreys, 'Putting Coercive Control into Practice,' (n. 16) 164.

²³ Ibid, 172. See also, Andy Myhill and Kelly Johnson, 'Police Use of Discretion in Response to Domestic Violence,' (2016) 16(1) *Criminology & Criminal Justice* 16; Amanda L. Robinson, Gillian M. Pinchevsky and Jennifer A. Guthrie, 'A Small Constellation: Risk Factors Informing Police Perceptions of Domestic Abuse,' (2018) 28(2) *Policing & Society* 200.

²⁴ Barlow, Johnson, Walklate and Humphreys, 'Putting Coercive Control into Practice,' (n. 16) 170.

²⁵ Ibid.

²⁶ Ibid, 171. See also: Cassandra Wiener, 'Seeing What is "Invisible in Plain Sight": Policing Coercive Control,' (2017) 56(4) *The Howard Journal of Crime and Justice* 503-504.

²⁷ Barlow, Johnson, Walklate and Humphreys, 'Putting Coercive Control into Practice,' (n. 16) 175. See also, Charlotte Bishop and Vanessa Bettinson, 'Evidencing Domestic Violence, Including Behaviour that Falls Under the New Offence of "Controlling or Coercive Behaviour",' (2018) 22(1) *The International Journal of Evidence & Proof* 23.

²⁸ Family Law Act 1996, ss 33-40.

²⁹ Ibid, s 42.

To cope with this shift, HM Courts & Tribunals Service issued a list of court priorities. The granting of non-molestation and occupation orders remained within the family court's 'work that must be done'.³⁰ The expectation was that hearings would take place primarily via video or telephone. It is now anticipated that it will be the end of 2020 or Spring 2021 before the family justice system will return to anything resembling normality.³¹ As a result, we can expect some expansion of cases heard remotely.³² Whilst remote hearings are likely to remain the most common, all family courts will be open, at significantly reduced capacity, by early July.³³ There will be increased scope, therefore, for cases to be heard fully in person, and others through a 'hybrid' arrangement, in which some parties attend in person and others remotely.³⁴

This is not the roll-out of a new system that has had the benefit of robust prior testing. The family court is having to find its way in intensely challenging circumstances against the backdrop of an already unmanageable pre-Covid caseload.³⁵ Guidance has been issued to support the navigation of these challenges.³⁶ In response to the 'overwhelming view of the judiciary and legal profession', further 'directive or proscriptive' case management guidance will not be issued.³⁷ Instead, we will see 'bespoke case management decisions' being taken on a 'case by case basis'.³⁸

The shift to remote hearings presents opportunities to review the experience of victims within the family justice system, but also significant immediate risks. We are at a stage when the data are only just emerging on the operation of the remote family court. At the request of the President of the Family Division, the Nuffield Family Justice Observatory ('FJO') conducted a rapid review of the use of remote hearings within family justice in response to Covid-19.³⁹ The consultation ran from 14 to 28 April 2020, with over 1,000 responses received.⁴⁰ The vast majority of responses were from professionals working within family justice.⁴¹ Data on the experience of remote hearings from parents' and family members' perspectives are being collected by the Transparency Project through an online

³⁰ HM Courts & Tribunals Service, 'Summary of Family Business Priorities Previously Agreed with the President of the Family Division: 21 April 2020,' last accessed 12 June 2020, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/880307/Ops_update_-_family_court_business_priorities_21_April_2020_FINAL.pdf.

³¹ Sir Andrew McFarlane, 'The Family Court and COVID 19: The Road Ahead,' 9 June 2020, <https://www.judiciary.uk/announcements/the-family-court-and-covid-19-the-road-ahead/>, para. 5.

³² *Ibid*, paras. 11 and 17.

³³ *Ibid*, para. 19.

³⁴ *Ibid*, para. 14.

³⁵ *Ibid*, para. 42.

³⁶ Sir Andrew McFarlane, 'COVID 19: National Guidance for the Family Court 19th March 2020,' 19 March 2020, https://www.judiciary.uk/wp-content/uploads/2020/03/Presidents-Guidance_Covid-19-2.pdf; Mr Justice MacDonald, 'The Remote Access Family Court: Version 4,' 16 April 2020, <https://www.judiciary.uk/wp-content/uploads/2020/04/The-Remote-Access-Family-Court-Version-4-Final-16.04.20.pdf>.

³⁷ Sir Andrew McFarlane, 'The Family Court and COVID 19,' (n. 31) para. 16.

³⁸ *Ibid*.

³⁹ Nuffield Family Justice Observatory, *Remote Hearings in the Family Justice System: A Rapid Consultation* (London: Nuffield Family Justice Observatory, 2020).

⁴⁰ *Ibid*, 2 and 5.

⁴¹ Only 3% of respondents were parents: *Ibid*, 5.

survey.⁴² The sample size is small, with 50 responses received by 28 April.⁴³ Fifty-eight per cent of respondents were parties to proceedings, with the remaining respondents 'supporters' of those parties.⁴⁴

The data collected to date have already made an important contribution to understanding the operation of the remote family court, despite their collection under intense time pressure. We do not yet, however, have comprehensive data on victims' experiences of the new system. Understanding victims' experiences is further complicated by the lack of a detailed breakdown in the findings to date of the specific hearings to which the findings relate. Work is needed as a matter of urgency to continue to invest in understanding these experiences. The analysis below is based on what is known now, drawing out three access to justice themes that should inform future research: safety; participation; and confidentiality. Current findings, and the attendant access to justice concerns, suggest that best practice guidelines to support the conduct of hearings involving domestic abuse allegations might become necessary, both to ensure consistency and that victims are fully supported to participate within proceedings, even if these are not 'directive or proscriptive'.

a) Safety

There are severe restrictions on victims' capacity to access legal proceedings when living in the same house as the perpetrator, and attendant safety risks. As discussed above, controlling access to internet and telephone usage are strategies used by perpetrators to exert power and control. If the hearing goes ahead, some victims will face the prospect of having to conduct that hearing in the same physical space as the perpetrator. It is encouraging that the President of the Family Division has given general guidance that lay parties should be supported to engage with the remote court outside of their homes, such as in solicitors' offices,⁴⁵ but particular support is needed for the increased number of self-representing litigants, who have to navigate the system without legal assistance.

In the cases in which the perpetrator is not living in the same physical space as the victim, remote hearings might represent some improvement on previous practice. Concerns about the inadequacies of court facilities in protecting victims of domestic abuse in civil and family proceedings long pre-dated the pandemic.⁴⁶ Small trials took place last year to allow victims applying for domestic abuse injunctions to appear by video link, to save having to face the perpetrator in person in court, with positive results.⁴⁷ Some respondents to the FJO's consultation also reported positive experiences of obtaining non-molestation orders remotely, including accessing ex-parte non-molestation orders by telephone helping to

⁴² Transparency Project, 'Justice on the Altar,' 29 April 2020, <http://www.transparencyproject.org.uk/justice-on-the-altar/>.

⁴³ Ibid.

⁴⁴ Ibid. These 'supporters' included lawyers, lay advocates, McKenzie friends and family members. Twenty-two cases concerned non-financial remedy private law proceedings and three concerned domestic abuse.

⁴⁵ Sir Andrew McFarlane, 'The Family Court and COVID 19,' (n. 31) para. 28.

⁴⁶ For example, Coy et al., *Picking Up the Pieces*, (n. 12) 43-44; Jenny Birchall and Shazia Choudhry, 'What About My Right Not to be Abused?' *Domestic Abuse, Human Rights and the Family Courts* (Bristol: Women's Aid, 2018), 8.

⁴⁷ 'Press Release: Video Hearings Tested in Domestic Abuse Cases,' 9 May 2019, <https://www.gov.uk/government/news/video-hearings-tested-in-domestic-abuse-cases>. Six cases were held using the video link. Independent evaluation is ongoing.

avoid the distress of attending court in person and the need to find childcare at the time of the hearing.⁴⁸

Remote hearings, however, also present new opportunities for perpetrators to use the hearings as a means to perpetrate coercive control.⁴⁹ There will, therefore, be new challenges for judges in identifying abusive behaviour when conducting hearings remotely, with no capacity to observe the physical behaviour of the parties when the hearing takes place via telephone and only limited capacity to do so through video. There will also be major challenges for judges in understanding victims' experiences of abuse under intense time pressure. The President of the Family Division has been candid that, in order to respond to caseloads, there will have to be a 'very radical reduction in the amount of time that the court affords to each hearing'.⁵⁰ The challenge here is that coercive and controlling behaviour cannot be condensed into a few select incidents; time is needed to unpick the complex web of abusive behaviour. These challenges are relevant not only to victims' safety but also their capacity to participate within hearings.

b) Participation

To date, most family law hearings appear to be taking place by telephone.⁵¹ Work is ongoing on the use of video platforms.⁵² Some alarming examples were given in the FJO's consultation that suggest that victims are not always being supported to participate fully in proceedings. Examples included victims being left on phonelines with the perpetrator being the only other person on the call,⁵³ and the risk of perpetrators recording proceedings,⁵⁴ despite the prohibition of recording remote hearings.⁵⁵

Broader concerns exist also about victims' capacity to give their best evidence when they are at home on their own during the hearing, with the perpetrator able to see and/or hear them through the telephone/video link.⁵⁶ Inequalities in the location of the parties is also significant and suggests the need for caution before proceeding with 'hybrid' hearings. Examples were given within the FJO's consultation of the victim having to participate in the hearing from home, but the perpetrator being able to be in the same location as his lawyers.⁵⁷ 'Technical workarounds' are developing to keep an open line between lawyer and client during the hearing,⁵⁸ but this does not overcome the differences in what the judge and the parties can see when some are attending in person and others remotely. The challenges for victims navigating remote hearings without a lawyer will be even more acute. Ensuring access to court papers for litigants who are either unrepresented, or who are attending the hearing in a different physical space to their lawyer, is also a significant issue that is likely to shape victims' participation in proceedings.

⁴⁸ Family Justice Observatory, *Remote Hearings in the Family Justice System*, (n. 39) 14 and 47.

⁴⁹ *Ibid*, 16.

⁵⁰ Sir Andrew McFarlane, 'The Family Court and COVID 19,' (n. 31) para. 43.

⁵¹ Within the Transparency Project's survey, 73% of hearings were conducted using this platform: Transparency Project, 'Justice on the Altar' (n. 42).

⁵² Sir Andrew McFarlane, 'The Family Court and COVID 19,' (n. 31) paras. 22-26.

⁵³ Family Justice Observatory, *Remote Hearings in the Family Justice System*, (n. 39) 14.

⁵⁴ *Ibid*, 15-17.

⁵⁵ See further, Mr Justice MacDonald, 'The Remote Access Family Court,' (n. 36) para. 5.20.

⁵⁶ Family Justice Observatory, *Remote Hearings in the Family Justice System*, (n. 39) 16-17.

⁵⁷ *Ibid*.

⁵⁸ Sir Andrew McFarlane, 'The Family Court and COVID 19,' (n. 31) para. 27.

c) Confidentiality

Hearings taking place remotely also raise important questions about confidentiality, and in particular how judges can police who is in the room at the time of the hearing. The majority of respondents to the Transparency Project's survey did not know who else was present during the remote hearing.⁵⁹ In addition, whilst not having to find childcare was identified as a strength of remote hearings by some within the FJO's consultation,⁶⁰ the presence of children in the home at the time the hearing takes place runs the risk that they will hear the proceedings, including accounts of domestic abuse.⁶¹

V. Conclusion

Covid-19 has created a fertile environment for perpetrators to exert power and control, and lockdown measures restrict victims' opportunities to access support. The pandemic is bringing into sharper focus the tensions within the existing legal framework in responding to this challenge. The 'coercive control' offence has been a crucial development in recognising patterns of abusive behaviour, but its effectiveness is undermined by problems with implementation. The shift to remote hearings provides new opportunities to review how victims' experiences of the family justice system can be improved, but also raises new challenges, with serious access to justice concerns. What is urgently needed is further data on victims' experiences of the remote court system, as well as monitoring how domestic abuse can be evidenced in the light of Covid-19. Access to legal advice and support will be more crucial than ever for victims navigating the court system, underlining once more the critical importance of reviewing the legal aid threshold. Best practice guidelines on the conduct of remote hearings in domestic abuse cases might also prove necessary, in particular as understanding develops of how victims can be best supported. Longer term, pressure must be maintained on the importance of funding and training for those on the frontline, if any transformational shift in the treatment of domestic abuse is to be achieved.

⁵⁹ Transparency Project, 'Justice on the Altar' (n. 42).

⁶⁰ Family Justice Observatory, *Remote Hearings in the Family Justice System*, (n. 39) 47.

⁶¹ *Ibid*, 15-16.