

1. In August 2020, I wrote an article on *R v P (Children: Similar Fact Evidence) [2020] EWCA Civ 1088* (<https://www.stiveschambers.co.uk/r-v-p-children-similar-fact-evidence-2020-ewca-civ-1088/>). The Court of Appeal overturned a case management decision not to accept similar fact evidence. Subsequently, the case was transferred to the High Court for the fact-find hearing. The fact-find hearing was heard by the Honourable Mr Justice Hayden, who delivered a judgement in the matter on 15 January 2021: *F v M [2021] EWFC 4*.
2. Within this detailed judgement, the High Court provided guidance on:
 - a. The Court's approach to allegations of coercive and controlling behaviour;
 - b. The use of Scott Schedules in such cases.

The Facts

3. The Mother and Father married in 2014, and in the same year the older child was born. In September 2017, Mother left the Father and later that year the younger child was born. The Father had not seen the older child since separation and had never seen the younger child.
4. The Father issued an application for a Child Arrangements Order in October 2017, for contact with the children. Mother opposed this application and made allegations of coercive and controlling behaviour by Father and mistreatment of the children.
5. In 2018, the Father began a new relationship, with Mrs D. Mrs D was also involved in court proceedings in Wales regarding her own children and their Father, Mr D. The court in Wales ordered a Section 37 report, which raised concerns in relation to her children's welfare and the nature of the relationship between Mrs D and Father. On the advice of the police, the Welsh local authority contacted the local authority in London who were involved with Father's application for a Child Arrangements Order.

6. The Section 37 report revealed that Mrs D had abruptly resigned from her teaching job and moved to Wales with Father and her children, ceasing all contact between the children and Mr D.
7. In December 2018, the court in Wales had ordered that Mrs D's children should be removed from her care and placed in the care of Mr D under an interim order. Since the removal of the children, Mrs D did not engage with the local authority or make attempts to see her children. The Welsh local authority concluded that Father had behaved in a coercive and controlling way towards Mrs D.
8. In February 2019, the Welsh local authority filed a Section 7 report recommending a final order for the children to live with Mr D. The court in Wales made this order, without participation from Mrs D. The report described her as an intelligent individual who had been a committed and doting Mother, the author shared her concerns for the welfare of Mrs D. The report referred to accounts given by Mrs D's children of being mistreated by Father.
9. Mother sought to have the Welsh evidence adduced into the proceedings, on the basis that it showed that Father had subjected Mrs D to the same kind of coercive control that had been directed against her. The Court refused permission.
10. The Mother appealed to the High Court. On 28 July 2020, Cohen J granted permission to appeal and assigned the appeal to the Court of Appeal pursuant to FPR 2010, rule 30.13. The Court of Appeal overturned the case management decision, for the following reasons:
 - a. The necessary analysis concerning whether the disputed evidence should be admitted was not carried out;
 - b. The Welsh reports were relevant and therefore admissible;
 - c. The evidence should be admitted in the interests of justice;
 - d. The evidence may be capable of establishing propensity that may be of probative value in relation to the core allegations.
11. The Court of Appeal transferred the case to the High Court, for the fact-find hearing.

The fact-find hearing

12. In accordance with the Court of Appeal's decision, the High Court heard not only about the Father's treatment of Mother, but also about his relationship with Mrs D. Mrs D remained in a relationship with Father. The parents of both Mother and Mrs D gave evidence, as did Mrs D's former husband.
13. The Honourable Mr Justice Hayden made a plethora of findings against the Father. However, of particular use, is the guidance provided in relation to the approach to be taken to allegations of coercive and controlling behaviour both at case management stage and during fact-find hearings.

The approach to allegations of coercive control

14. The Honourable Mr Justice Hayden, was clear that:

"It is crucial to emphasise that key to this particular form of domestic abuse is an appreciation that requires an evaluation of a pattern of behaviour in which the significance of isolated incidents can only truly be understood in the contexts of a much wider picture" [60].

15. The Honourable Mr Justice Hayden, considered the statutory guidance published by the Home Office pursuant to Section 77(1) of the Serious Crime Act 2015, in which paradigm behaviours were identified. He found these to be relevant in cases such as this:
 - a. Isolating a person from their friends and family;
 - b. Depriving them of their basic needs;
 - c. Monitoring their time or communication;
 - d. Controlling movements or basic care needs;
 - e. Depriving an individual of access to services;
 - f. Putting an individual down;
 - g. Financial abuse;
 - h. Threats to hurt or kill;
 - i. Threats to reveal private information;
 - j. Assault;
 - k. Criminal damage.

16. He referred to his previous ex-tempore judgement in the case of **A County Council v LW & Anor [2020] EWCOP 50**, in which he concluded:

“It is important to emphasise that this list is not exhaustive...Abusive behaviour of this kind will often be tailored to the individual circumstances of those involved. The above is no more than a check list which would prompt questioning and enquiring, the responses to which should be carefully recorded so that the wider picture emerges. That which might, in isolation, appear innocuous or insignificant may in the context of a wider evidential picture be more accurately understood” [22].

17. Within **F v M**, he reiterated that it is *“crucial to evaluate individual incidents in the context of the wider forensic landscape”* [102] and that a *“tight, overly formulaic analysis may ultimately obfuscate rather than illuminate the behaviour”* [108].

18. Providing guidance on the overall approach to the assessment of evidence:

*“What requires to be factored into the process is the recognition of the insidious scope and manner of this particular type of domestic abuse. The emphasis in Section 76 of the Serious Crime Act 2015, is on **repetition** and **continuous engagement** in patterns of behaviour. Behaviour, it seems to me, requires, logically and by definition, more than a single act. The key to assessment abuse in the context of coercive control is recognizing that the **significance of individual acts may only be understood properly within the context of the wider behaviour.**”*

The use of Scott Schedules in cases concerning coercive control and behaviour

19. The Honourable Mr Justice Hayden was invited to make comment on the use of Scott Schedules in cases involving this category of abuse. He considered it would not be appropriate to give prescriptive guidance, however was of the view that:

- a. Whilst there is an advantage in marshalling the evidence and honing down allegations, this form of abuse may not easily be captured by a Scott Schedule;

- b. An intense focus on particular and specified incidents may be a counterproductive exercise. It carries the risk of obscuring the serious nature of harm perpetrated in a pattern of behaviour;
- c. Scott Schedules have severe limitations in this particular sphere as to render them both ineffective and frequently unsuitable;
- d. Whether a Scott Schedule is appropriate will be a matter for the Judge and advocates in each case.

Conclusion

20. In cases such as these, representatives and the court need to be mindful that limiting allegations and taking a formulaic approach may be counterproductive. Consideration should be given to whether the use of a Scott Schedule is appropriate, considering the potential risk of eliminating evidence of pattern of behaviour, which by definition, is the nature of coercive control. When adjudicating on allegations of coercive and controlling behaviour, the court must look at the wider landscape.

Whilst every effort has been taken to ensure that the law in this article is correct, it is intended to give a general overview of the law for educational purposes. Readers are respectfully reminded that it is not intended to be a substitute for specific legal advice and should not be relied upon for this purpose. No liability is accepted for any error or omission contained herein.



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