

Name:

Student ID number:

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Module code:

Assessment 1: Critically review two journal articles on ‘*Domestic Abuse in England and Wales*’ published in the past 7 years.

Submission deadline:

Word Count:

“This assessment consists of my own work, save that any part which is not my own work has been cited as such and attributed to the author. I am aware that University regulations relating to plagiarism apply. No component of this work has been submitted in support of any application for another qualification in this University or elsewhere.”

Signed: -----

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Table of Statues

- Brief Spousal Assault Form for the Evaluation of Risk (B-SAFER) 2004
- Crime Survey for England and Wales (CSEW) by Kantar Public 2022
- Domestic Abuse Act 2021
- Domestic Abuse Risk Assessment (DARA)
- Domestic Abuse, Stalking and Harassment, and Honour-Based Violence (DASH), 2009
- Mental Capacity Act 2005
- Non-fatal Strangulation (NFS) under S. 75A, Serious Crime Act 2015
- Ontario Domestic Assault Risk Assessment (ODARA) 2004
- S. 47 Offences Against the Persons Act 1861 (OAPA 1861)
- Spousal Assault Risk Assessment (SARA) 2000

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Table of Cases

- R (on the application of T) v DPP [2003] EWHa 266
- R v Barnes [2004] EWCA Crim 3246
- R v Brown [1994] 1 AC 212
- R v Chan Fook [1994] 1 WLR 689
- R v Miller [1954] 2 QB 282
- R v Savage; DPP v Parmenter [1992] 1 AC 699
- R v Venna [1976] QB 421
- R v. Roberts (1971) 56 Cr App R 95

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Vanessa Bettinson “A Comparative Analysis of Non-Fatal Strangulation Offences: Will the Proposed s. 75A Serious Crime Act 2015 Work for Victims of Domestic Violence and Abuse?” (2022) *The Journal of Criminal Law* Volume 86, Issue 2, pp. 75–93

Andy Myhill, Katrin Hohl and Kelly Johnson “The ‘officer effect’ in risk assessment for domestic abuse: Findings from a mixed methods study in England and Wales” (2023) *European Journal of Criminology* Volume 20, Issue 3, pp. 856–877

The article “A Comparative Analysis of Non-Fatal Strangulation Offences: Will the Proposed s. 75A Serious Crime Act 2015 Work for Victims of Domestic Violence and Abuse?” by Vanessa Bettinson analyzes the newly introduced offence of Non-fatal Strangulation (NFS) under s. 75A of the Serious Crime Act 2015¹, which was inserted by 70s of the Domestic Abuse Act 2021². The article concludes that further revisions to this offence should be considered. The creation of a specific crime for non-fatal strangulation has been previously explored and enacted in several legal jurisdictions, and England and Wales could have learned from their experiences to avoid the need for additional legislative changes in this area. However, this did not happen, and the drafting of s. 75A, driven by the goal of better protecting domestic violence victims, appears to have limitations that hinder its effectiveness. These limitations are evident in the use of restricted and prohibited language, conduct and relevant amount of complexities in defence of consent in some determined instances. These aspects are seen as setbacks for campaigners who are inclined to gain improvements in the cases of domestic violence and abuse towards the establishment of criminal justice response, despite the potential educative function this offence could serve.

Also the article “The ‘officer effect’ in risk assessment for domestic abuse: Findings from a mixed methods study in England and Wales” by Andy Mayhill, Katrina Howl and Kelly Johnson concentrates on the predominant focus of research on domestic abuse risk assessment has been on evaluating the accuracy of specific tools, while less emphasis has

¹Bettinson, p. 90 stated that Section 75A(1) stands for an individual ('A') can be charged with an offence if they intentionally strangle another person ('B') or perform any other act against B that interferes with their ability to breathe, constituting a battery of B.

² The Home Office, in its Policy Paper titled "Domestic Abuse Act 2021: overarching factsheet (2021)," anticipates that all provisions of the act will be implemented through commencement regulations by 2021/22.

been placed on how practitioners implement these risk assessment tools. This paper shares the outcomes of a comprehensive study conducted in England and Wales, utilizing a mixed methods approach. The study utilizes multi-level modelling to identify an intriguing phenomenon called the 'officer effect,' wherein responses of the victims to Domestic Abuse, Stalking and Harassment, and Honour-Based Violence (DASH) risk assessment get the impact of the assigned officer who is responsible for conducting the assessment³. Notably, this officer effect is most pronounced in questions intended to capture aspects of controlling and coercive kind of behaviour but is less noticeable in identifying physical injuries. Additionally, the paper presents corroborative evidence from interviews conducted with first-response officers and observations led in the field; shedding further light on the officer effect and providing valuable insights into its underlying factors. The implications of these findings are discussed in terms of the design of assessments made over the primary risk, safeguarding the identified victim, and usage of data collected by police for predictive modelling.

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Introduction

As per the data declared by the National Centre for Domestic Violence (NCDV), in the year 2022, there were a total of 15 million cases recorded of domestic abuse and violence in England and Wales. According to the UK Government, Domestic Violence gets defined as a non-statutory cross-government concept, encompassing "any incident or pattern of incidents of controlling, coercive, or threatening behaviour, violence, or abuse between individuals aged 16 or over who are or have been intimate partners or family members, irrespective of gender or sexuality. This definition includes various forms of abuse, such as psychological, physical, sexual, financial, and emotional, among others."⁴

However, the research conducted by Hester et al. (2023) highlights several key gaps in the regulations of UK governance to prevent domestic violence. These scholars marked that the current Crime Survey for England and Wales (CSEW)⁵ questions do not accurately confine domestic abuse or otherwise note the cases that reflect the real experiences of those affected. Further, it emphasizes that coercive control should be recognized as a central

³ ACPO (2009, 2009a, 2009b)

⁴Strickland and Allen. Domestic Violence in England and Wales. BRIEFING PAPER Number 6337.

⁵ The Crime Survey for England and Wales is carried out by Kantar Public on behalf of the Office for National Statistics. This survey plays a crucial role as a valuable tool for the Government, enabling them to evaluate and improve crime reduction policies, while also providing essential insights into the changing trends of crime over the past 30 years.

aspect of domestic abuse. Additionally, while physical assault is essential to measure domestic abuse, attempting to establish frequency through event counting might be impractical. On a critical note, Hester et al. (2023) advocated a fundamental re-evaluation of the current questions over the instances of domestic abuse as reported by CSEW. They suggest incorporating a broader range of interrogations related to domestic abuse and its impact. By revising the module, it should be possible to identify and estimate the prevalence of different 'abuse profiles,' complementing improved headline measures and providing better insights to inform policy and practice.

To meet such gaps and to establish an effective legal provision for restricting domestic violence in England and Wales, Bettino (2022) on page 92 explained that these states should construct a new offence based on the knowledge collected from other legal systems. The current s. 75A Serious Crime Act 2015 misses the opportunity to educate about non-fatal strangulation (NFS) and its inherent danger by using the vague term "any other act" and lacking a clear definition of strangulation. While not requiring proof of a specific degree of harm is a positive step for women's rights advocates, it is overshadowed by the defence of consent.

Bettino (2022) on page 92 also declared that to build a stronger case, it may be necessary to demonstrate that the defendant appeared reckless for causing serious harm, which could involve relying on the actual suffering of victims. Since consent plays a crucial role in s. 75A, it impacts the training personnel during the criminal justice system over the context of coercive control and NFS usage in the periphery of being in abusive relationships becomes crucial. Only with such training can the new offence effectively protect victims and hold perpetrators of domestic violence and abuse accountable.

Following the same thread of meeting gaps to restrict domestic violence in England and Wales, Mayhill et al (2023) initiated a very practical approach. From their mixed research findings, Mayhill et al (2023) established on page 871 that the process of conducting a DASH assessment varies as per the respective officer and the report. Officer-related features are subject to influence the delivered responses of the victim' and the recording of those responses, affecting data collection on certain risk factors comparatively high. The officer effect refers to questions about controlling as well as deliverance of coercive behaviour rather than the instances of physical injuries or circumstantial factors. First-response officers' understanding of domestic abuse, diligence, rapport-building skills, and asking questions encouraging disclosure play a role in this effect.

Further, Mayhill et al (2023) on page 872 stated that the DASH structure also contributes to variability in risk assessments. Some questions are better suited for specialist support workers due to their wide-ranging nature, requiring time to probe victims' responses thoroughly. Additionally, the structure allows for paraphrasing by police officers, potentially introducing measurement errors. To improve data quality, items with significant intra-class correlation coefficients (ICCs) may need review to reduce ambiguity, ensuring greater confidence in yes/no responses without additional free-text explanations from officers. The study's multi-site nature increases the applicability of findings to policing in England and Wales.

Both these articles aimed to protect the victims in cases of domestic abuse and violence, especially in England and Wales. Bettino (2022) emphasised a specific understanding of the terms which represent the instance of NFS, such as strangulation, choking, asphyxiation, and suffocation. While referring to different kinds of cases as enlisted in the Table of Cases, Bettino (2022) offered distinctive meanings to these acts of violence. The lethality of all these instances was explained by the severity of the violent actions of the victim. Further, Bettino (2022) analyzed NFS through the lens of coercive control, whereby the abusers were found to be in ongoing intimidation, isolation, and control to enforce compliance with their demands. The scholar noted that by implementing NFS in Coercive Control in England and Wales, the detection of the abusers exerting coercive control, and the concerns of getting involved in threats, physical and mental violence, and dominance through punishment can be established. However, the practical proceedings of these activities are marked to be a real-life challenge for Bettino (2022). On page 77, Bettino (2022) noted that triggering of NFS incidents due to non-compliance, jealousy, attempts to end relationships, and sudden escalation are noted to be the reasons for murder and can enhance the possibilities of death through coercive control.

Moreover, Mayhill et al (2023) on page 858 referred to the debate on the concept of "risk" as a 'double-edged sword'⁶ and the resultant of the prolonged practices of potential harm, danger, uncertainty, and harms getting unfolding over time. In this context, these scholars interpreted that way to minimise risk factors under domestic violence and emphasised the control of restricting behaviours which can instigate harmful risk. Further, there was a provision specified by balancing between caution and overreaction so that the risk-led consequences can be prevented for causing harm to the victim. Under such suggestions,

⁶ Mythen (2014:16)

Mayhill et al (2023) re-interpreted the factors leading to risks and recommended the act to oversimplify complicated relations and practice disconnection from wider contexts like gendered social relationships. In a way, the emphasis is to assess risks involved in domestic abuse and resolving abusive behaviours through human agencies. However, based on the instances like *R v. Roberts* (1971) 56 Cr App R⁷; *R v Brown* [1994] 1 AC 212⁸; and *R v Miller* [1954] 2 QB 282⁹; Mayhill et al (2023) debated the concept of structured judgement and referred to the challenges identified in terms of coercive control; which remains inclusive of non-physical forms of abuse and gender-based violence. It is this complexity of coercive control in domestic violence that encouraged these scholars to analyse the provisions of risk assessment as per the perceptions of risk declared by the victims.

Though these articles dealt with the same context of domestic violence and abuse and interpreted the concern from the point of view of protecting the victims; still there are some differences to be noted in the research approach. On the one hand, Bettino (2022) noted the contextual considerations under NFS, where domestic violence and abuse are noted as the means to limit a bespoke offence. Though there are different legal jurisdictions to address this concern, still the scholar stated that this context might exclude other scenarios like dating relationships. Different jurisdictions adopt varying approaches in addressing NFS. By exemplifying the way of handling NFS, Bettino (2022) noted the instances of South Australia where the jurisdictions are restricted to intimate personal relationships; whereas in the case of England and Wales, this jurisdiction remains extended even in case all those relations which are legally ended.

On the contrary, by referring to many legal cases, Mayhill et al (2023) referred to the variability noted through the imposition of the DASH Assessment. For these scholars, the DASH assessment is effective in bringing out some of the complex instances of domestic violence and abuse. However, at the same time, these scholars question the process of structuring the officer-related factors in the process of questioning and noted that there can

⁷ The Court of Appeal in England and Wales addressed the issue of consent and assault. The case involved a man who offered a woman a ride home but then attempted to assault her in his car. Fearing for her safety, the woman jumped out of the moving car, sustaining injuries in the process.

⁸ The House of Lords (now the Supreme Court of the United Kingdom) dealt with the issue of consensual sadomasochistic activities among adults. The case involved a group of men who engaged in various forms of BDSM (bondage, domination, sadism, and masochism) activities, which resulted in serious injuries.

⁹ The Court of Appeal in England and Wales dealt with the concept of actus reus (the physical act of a crime) and the principles of criminal liability. The case involved a man who fell asleep while smoking in a makeshift bed in an empty house, inadvertently causing a fire. When he woke up, he moved to another room without attempting to extinguish the fire or alert the authorities.

be differences and contradictions in Officers' understanding of domestic abuse and coercive control, professionalism, rapport-building skills, and diligence affect data collection.

Conclusion

Conclusively, both articles offered a wide-ranged and critical way of interpreting the factors of NFS and the benefits & limitations in the process of investigating domestic violence and abuse. The point to be noted is that both these articles appealed for the widening of legal jurisdiction to restrict the cases of domestic violence and abuse. The suggested threads were in terms of developing modifications of current policies in England and Wales. Bettino (2022) asked for reformation in the detection procedure of NFS Offense cases and Mayhill et al (2023) propose Domestic Abuse Risk Assessment (DARA) on page 873 to address shortcomings of DASH risk assessment¹⁰. From both article one thing has been assured that the legal system of England and Wales need better risk assessment training and integrated ways to understand the gendered dynamics in the cases of domestic violence and abuse. It is thus the responsibility of the UK government to come in closer collaboration with the judicial system so that the instances of domestic violence can be restricted and adequate judgements can be delivered to the victims.

¹⁰ Barlow and Walklate (2021)

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