



WOMEN WHO KILL:
how the state criminalises
women who we might
otherwise be burying



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ABOUT THE CONTRIBUTORS

About the Centre for Women's Justice (CWJ)

CWJ is a legal charity working to hold the state to account and challenge discrimination in the justice system around male violence against women and girls. Formed in 2016, CWJ has undertaken a wide range of highly publicised strategic legal challenges and collaborative projects through partnerships with womens sector organisations.

CWJ is a registered charity 1169213.

www.centreforwomensjustice.org.uk

About Justice for Women (JfW)

Founded in 1991, JfW is a feminist campaigning organisation that supports, and advocates on behalf of, women who have fought back against or killed violent men. Over the past years, JfW has developed considerable legal expertise in this area and has been involved in a number of significant cases at the Court of Appeal that have resulted in women's original murder convictions being overturned.

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FOREWORD

In 1990, Sara Thornton was convicted of the murder of her violent husband, Malcolm Thornton. In the same year, Kiranjit Ahluwalia was also convicted of the murder of her husband, Deepak Ahluwalia. Both women were sentenced to life imprisonment. A 1991 Channel 4 documentary, *The Provoked Wife*, featured both their cases, as well as others. It highlighted how, despite the serious violence these women had been subjected to by their male partners, they were unable to use any available defences to escape murder convictions.

In the same year, feminists demonstrated outside the Royal Courts of Justice in support of Sara Thornton's appeal, and they highlighted the disparity in the way in which the criminal justice system treats women, compared with the way it treats most men who kill their wives. The Court of Appeal dismissed Sara Thornton's appeal. Two days later, it was reported that Joseph McGrail, who kicked his wife to death because, in the words of the presiding judge, 'she would have tried the patience of a saint', was given a two-year sentence. Media interest was piqued. A new campaign group, Justice for Women, was founded and it joined forces with Southall Black Sisters, who were campaigning to overturn Kiranjit Ahluwalia's murder conviction.

Over the following few years, as a result of campaigning and media coverage, public understanding of the context of domestic violence that leads some women to kill grew. Whereas many women were murdered by extremely abusive male partners, most of the small number of women who killed their male partners were driven to kill as a consequence of that partner's violence and abuse towards them. In 1992, Kiranjit Ahluwalia's appeal was allowed and, three years later, the Court of Appeal also allowed the appeal of Emma Humphreys. Both judgments set important precedents, which attempt to accommodate the different way in which women may respond to provocation.

In 2004, the Law Commission published a report, *Partial Defences to Murder*, in which it stated that the law on murder in England and Wales was 'a mess'. The following year, the Government invited the Law Commission to conduct a review and opened a consultation. The subsequent report¹, which contained a number of recommendations for reform, was published in 2006. Some recommendations were enacted in the Coroners and Justice Act 2009, including – significantly – the abolition of the defence of provocation and its replacement with the defence of loss of control caused by a fear of serious violence or a justifiable sense of feeling wronged.

However, despite the changes over the last three decades, Justice for Women has continued to hear from many women convicted of murder after killing the man who was violent and controlling of them. We have a culture of misogyny, normalised by the widespread availability of violent pornography, which has had an impact on every facet of society – from intimate relationships to institutions, including the criminal justice system. This strongly suggests a failure by the criminal justice system to grasp the gendered nature of violence against women and girls and the impact this can have, and to take a gender-informed, trauma-informed approach to cases involving women who kill in the

Public awareness of the nature and impact of domestic violence has continued to increase. Important new legislation has been introduced, including the offence of coercive and controlling behaviour and the Domestic Abuse Bill, currently before Parliament.

Sally Challen's successful appeal in 2019 raised further awareness of the impact of coercive control. And statutory guidance and training on policing, prosecuting and protecting victims has been introduced across the criminal justice system.

context of domestic abuse. This runs contrary to the Government's *Female Offender Strategy*² and its ambition to transform the response to domestic abuse.

The purpose of this research is therefore to investigate in detail why, despite an apparent increase in the understanding of domestic abuse, we continue to see so many miscarriages of justice and why there are still so many women who are themselves victims, serving life imprisonment for choosing to survive.

In 2017, CWJ was approached by a retired man who had been so moved by the news coverage of the appeal, subsequent retrial and ultimate acquittal of Stacey Hyde, a Justice for Women case, that he offered us a generous donation. We saw this as an opportunity to undertake a substantial piece of research – to evidence what we were seeing and identify what needs to change.



Harriet Wistrich

Director, Centre for Women's Justice

Founder member of Justice for Women, solicitor for Sally Challen and many other women who have appealed murder convictions



SUMMARY OF KEY FINDINGS

The findings of this research make clear that both the law itself and the way in which it is applied in England and Wales create barriers to achieving a just outcome in criminal proceedings against women who have killed their abusers. The recommendations in the final section of this report reflect this, calling for law reform and changes to practice at every stage of the criminal justice process, in order to overcome the many barriers that impede women getting justice in these cases.

1.

Lack of protection from domestic abuse: triggers to women's lethal violence

Despite efforts in recent years to improve the police response to domestic abuse, including coercive control, this research confirms that police practice remains inconsistent and often fails to protect women from abuse. In line with wider research,³ the majority of the women interviewed as part of this study had not reported the abuse they had experienced to the police. There were additional barriers for some women due to intersecting issues, including socio-economic status, ethnicity and disability. And some women experience the cumulative effect of abuse from successive partners.

Those women who do report abuse often have poor experiences, with police taking no further action or failing to enforce injunctions against the abuser. There are also failures to pursue a prosecution, and prosecutions leading to sentences that women perceive as lenient and leave them feeling unsafe.

In some cases reviewed as part of the research, the women involved appeared to have exhausted all other alternatives to keep themselves safe, leaving them in a situation where they may have felt that they were beyond the protection of the law. Unlike men who kill their female partners (where the killing is the culmination of their increasing abuse and control of the female partner), this research found that it is often after being subjected to prolonged and increasing coercive control, that women are driven to kill the perpetrator rather than be killed by him.

2.

First responders when women kill

Women who have killed their abuser are likely to be traumatised when they first engage with criminal justice agencies. At this critical moment in proceedings, sensitivity and skilled responses are needed from the police and initial legal representatives to allow women to make key decisions which will have significant consequences for their case – such as their choice of legal representative and whether to speak in interview. However as this research demonstrates, such a response is often lacking, leaving women without specialist legal advice and unable to make informed decisions.

Changing to a specialist solicitor is extremely difficult. A number of lawyers told us that women are unable to appoint a new solicitor after being initially represented by a duty solicitor at the police station, or by a solicitor recommended by their family, with no relevant experience or understanding of domestic abuse.

Furthermore, this research found examples of the Crown Prosecution Service pursuing murder charges inappropriately, and refusing plea bargains from women.

3.

Court proceedings

The research found that lawyers' understanding of violence against women and girls is critical if they are to provide good legal representation and identify the appropriate defence/s for women in these cases. An understanding of coercive control was found to be particularly important, as this allows a woman and her lawyer to identify patterns of behaviour and situate her experience of abuse as a form of entrapment.

Good practice in these cases involves building trust to enable disclosures and to investigate fully the background and context of the abuse.

Doing this takes time, skills and resources, which, as several lawyers reported, are often lacking (for example, because of legal aid funding constraints). One of the reasons a relationship of trust between a woman and her lawyer is so important in these cases is because it helps her to disclose the abuse she has experienced at an early stage, which is critical to the outcome of her case. However, the research findings show that late disclosure of abuse is common, with some women failing to disclose until after they had been convicted. This was particularly apparent in cases of coercive

control. Barriers to disclosure can be exacerbated for women from non-White backgrounds, where controlling, abusive and violent behaviour may intersect with other cultural factors and create greater complexity and isolation for BME women.

In addition to cultural barriers, the women and lawyers who participated in the research identified other barriers to disclosure. These included difficulties in disclosing abuse, particularly sexual abuse, to male lawyers, and women feeling intense guilt at what they had done and not wanting to speak negatively of the men they 'loved'. The research found that this was compounded in some cases where women had been advised by their lawyers 'not to speak ill of the dead'.

The research found that women need to be prepared to disclose the abuse in court, but often they do not have such preparation. Many women found the experience of giving evidence about their abuse traumatic, and the presence of the family of the deceased was a significant inhibiting factor for some. Other women were affected by medication when giving evidence. Lawyers also need to explore the abuse effectively in court. This research found examples of cases where they did not do this, asking only superficial questions that did not convey the true nature and impact of a woman's experience. Being able to give evidence 'well' is key in



these cases. But some women stopped giving evidence because of these kinds of barriers and were convicted of murder or received long sentences for manslaughter. Conversely where women were able to disclose abuse, and where this was explored expertly in court, this led to positive outcomes.

Judges have a key role to play in ensuring justice for women in these cases. The research found examples of cases where judges had a very limited understanding of violence against women and girls, and where they perpetuated myths and stereotypes. Prosecuting barristers sometimes also cross-examine women in an unnecessarily aggressive way, even when the existence of abuse is not contested.

4.

Additional challenges

The research found that memory issues are common in these cases. This is often a response to trauma that preceded the killing, or to the killing itself. However the issue is not well understood, and may be interpreted by the prosecution and the judiciary as malingering.

Historic violence is often presented as equal in the relationship – that ‘she gave as good as she got’ – failing to recognise the complex dynamics of domestic abuse.

Commonly held myths and stereotypes about how a victim of abuse should behave are present in many cases, and these are believed by advocates and judges, as well as jurors.

These myths and stereotypes are used effectively to undermine women’s experiences or their account of events.

Women who used substances found it difficult to engage in the trial process, further impeding their defence. Women who were intoxicated at the time of the killing could not recall what had happened – in some cases, this led to their giving inconsistent or implausible accounts of the incident in question. This resulted in further complications in the use of partial defences, when the effect of substance use must be considered separately to any mental health issues.



5.

Expert evidence

The research found that the use of psychiatrists and psychologists can be problematic when there is a hierarchy of experts, when experts disagree or appear biased, and when experts are not trained in issues around violence against women and girls (VAWG). There is an over-reliance on medical experts and a reluctance to use others, such as VAWG experts and cultural experts, which would be beneficial in these cases, allowing the court to take full account of the circumstances surrounding the offence and achieve a just outcome.

6.

After conviction

This research found that once women are convicted, the chance of a successful appeal is extremely slim. The majority of women interviewed as part of the research either had no grounds for appeal, or had appealed and been refused. Many of the difficulties women experience, such as poor legal representation, are not grounds for appeal.

Of the cases included in this research, the vast majority of women were convicted of murder or manslaughter – only 7% of women were acquitted. The average minimum tariffs in murder cases and for manslaughter have increased across the board, with insufficient regard to the different impact these policy changes have had on women. For example, the use of weapons is an aggravating factor in determining a sentence, yet women, who are usually physically smaller than their male partners, are more likely to use a weapon rather than their bare hands when responding to an abusive partner.

Parole boards must consider the extent to which an offender takes full responsibility for their offence. This research found that this could be problematic for a woman who failed in her use of self-defence or provocation at trial, but who maintains that her culpability for the murder was reduced because of the circumstances of an abusive relationship.

How risk is determined was also seen to be a significant barrier for women, as risk assessments (and the broader parole process) are designed to cater for men's offending behaviour. Women have fewer opportunities for rehabilitation in a small, under-resourced female prison system. More and more women serving life sentences are being recalled to prison for minor infringements, rather than repeated violent behaviour. Community support for female offenders has been eroded to such an extent that women are often discharged from prison into situations where they have little or no access to appropriate support.

INTRODUCTION

The number of women who kill their abusive male partners is low, and is in stark contrast to the number of women who are killed by men who have a history of abusing them.⁴ Many women who kill their abusers are imprisoned for long periods, at great cost to themselves and to their families. The criminal justice system is ill-equipped to deal with such women. There are shared features of their cases which are absent from cases where women have been killed by men.

Women often kill as a last resort and because of failures in the very system that is supposed to protect them. The criminal justice system has failed to properly address men's violence against women – from policing and legal representation, to the courts and prison service.⁵ Community services have been subject to deep and wide-ranging funding cuts.⁶ Such services have a number of protective benefits: they provide many women with a 'route out' of coercive and controlling relationships; they assist them to pick up the pieces after experiencing abuse and build sustainable futures; and they help women access justice through the developed expertise of practitioners and by addressing trauma.⁷

There has been some progress in the way courts deal with the cases with which this research is concerned. In 2019, the Court of Appeal allowed the appeal of Sally Challen. Her conviction

for the murder of her husband, Richard, was quashed and a retrial was ordered. Shortly afterwards, prosecutors accepted her plea to manslaughter and she was given a determinate custodial sentence (one with a defined length which cannot be changed), which was covered by the time she had already served in prison. Sally Challen's appeal focused on fresh evidence and the proposition that societal understanding of domestic abuse had improved to the extent that coercive control was recognised in law. Her case has helped to inform judges, lawyers and the public about coercive control. It may result in improved understanding of domestic abuse, one that more accurately reflects the experience of women who are subjected to it. Whether this impact will be reflected in subsequent cases, and more generally, remains to be seen.

Despite this progress, and previous legal developments in understanding

the reasons why women kill,⁸ significant problems remain for women who kill their violent partners. In short: these women are often still prosecuted for murder as opposed to manslaughter; they are still convicted of murder; available partial defences, such as loss of control or diminished responsibility, are not advanced at trial; when manslaughter pleas are offered, these are sometimes not accepted by the Crown Prosecution Service; and women are rarely acquitted on the basis of self-defence.⁹

These are some of the legal problems that arise in the cases of women who kill their abusive partners. This research aims to identify and address the recurring problems as women progress through the criminal justice system, denying them access to justice. Although the demographics of individual women may bring additional problems, it is striking that these issues traverse any boundaries of age, class, race and religion.

There has often been academic ambivalence to the role of law in prescribing the changes needed for women experiencing domestic abuse and control.¹⁰ Additionally, some literature has claimed that in practice, legal 'actors' such as lawyers, judges and juries frame and filter the facts through an invisible and unquestioned set of assumptions or 'interpretative schema', which are based on outmoded concepts of men's violence against women in relationships.¹¹ Through in-depth interviews with lawyers and, most crucially, women themselves, this research explores the extent to which both the law itself and the way it is applied prevent women accessing justice after killing abusive men.

The legal framework in England and Wales

In England and Wales, murder and manslaughter are the two offences that constitute homicide. Murder is the unlawful killing of a living person in circumstances in which there is an intention to kill or to cause really serious harm. A conviction for murder will result in a mandatory life prison sentence. Legal defences to murder consist of complete defences, which will result in an acquittal, and partial defences, which will result in a conviction for manslaughter. The main complete defences to murder are accident and self-defence. In the case of self-defence, the use of lethal force must be both necessary and proportionate to the threat faced.

Manslaughter can be involuntary – in which case, it arises as a consequence of gross negligence or as a consequence of an unlawful act, such as an assault, which was not intended to cause really serious harm. Manslaughter can also be voluntary. Voluntary manslaughter may arise where there was an intention to cause serious harm or to kill, but that intention is mitigated by one of the partial defences of diminished responsibility¹² or loss of control.¹³ These partial defences therefore reduce what would otherwise be an offence of murder to manslaughter. Depending on the circumstances of the offence, sentencing for manslaughter can range from a discretionary life sentence, a term of imprisonment to, in rare cases, a non-custodial sentence.

The partial defence of loss of control was introduced by the Coroners and Justice Act 2009 and replaced the previous defence of provocation. This reform followed a lengthy review by the Law Commission and a consultation process and was intended, at least partly, to correct the perceived gender bias of the law.

The complete defence of self-defence (to murder), and the partial defences of diminished responsibility and loss of control, which reduce murder to manslaughter, are most relevant to this research.

Another important legal development that is relevant to this research is the criminalisation of coercive control. In 2015, controlling and coercive behaviour was made a criminal offence in England and Wales.¹⁴

For further analysis of the offence of coercive control, women's use of the defences outlined above and the broader legal framework surrounding these cases, see **Appendix 4**.

The United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules),¹⁵ to which the UK is a signatory, set out the requirements for ensuring that women in the criminal justice system who have experienced violence are identified, treated appropriately and receive support, and that their experience is taken into account in sentencing decisions. Under the Rules, sufficient resources must be made available for suitable community alternatives to custody. The UK is also a signatory to the UN Convention on all forms of Discrimination Against Women (CEDAW) and the Istanbul Convention.¹⁶ In 2015, the UN Special Rapporteur on Violence Against Women recommended that the UK Government should 'ensure that women's histories of victimization and abuse are taken into consideration when making decisions about incarceration, especially for non-violent crimes'.¹⁷ Yet, as this research shows, all too often this does not happen.

Homicide in the context of intimate partner relationships

Analysis of homicide data indicates that women's lethal violence is rare. Homicide victims and offenders are overwhelmingly male.¹⁸ However, in intimate relationships this pattern shifts, with women much more likely than men to be killed by a partner or ex-partner. According to the most recent Homicide Index data produced by the Office for National Statistics, 38% of female victims of homicide were killed by a partner or ex-partner compared with 4% of male victims.¹⁹

Research shows that women are more likely to be killed by men who have a history of abusing them. The most recent Femicide Census report,²⁰ which collects data on the women who have been killed by men in the UK, found that, of the 1,425 women who were killed by men over a 10-year period (2009–2018), 62% (n=888) were killed by a partner or an ex-partner. A history of previous abuse to the victim was evident in 59% (n=611) of the 1,042 femicides committed by an intimate partner or relative (although the Femicide Census reports that this is likely to be an undercount as many women do not disclose the abuse they are experiencing to others). Of the 888 women who were killed by a partner/ex-partner, 43% (n=378) had taken steps to separate (although again, the Femicide Census reports that this is likely to be an undercount as the steps women may have taken to separate are not always recorded or reported).

In contrast, this research, together with the small number of existing research studies in this area, shows that the vast majority of women who kill their partners do so after having been abused by the men they kill.²¹



METHODOLOGY

Researching women who kill abusive men is a complex and challenging task. The hidden nature of domestic abuse, the seriousness of the allegations against women and the related problems of access combined with ethical issues around confidentiality, anonymity and the potential for re-traumatisation has meant that previous research in the area has tended to focus on detailed case studies of trial transcripts²² or secondary data analysis²³ rather than primary research with the women concerned.

This study attempted to respond to these gaps in research by undertaking a more detailed assessment of the response of the criminal justice system in England and Wales to women who kill abusive men – with women’s experiences at the centre of the research. To do this, the study adopted a mixed methodological approach, drawing data from a range of primary and secondary sources. These are detailed more fully in **Appendix 1**.

Primary data collection

The main focus of this research is the qualitative interviews, comprising:

20 interviews with women who killed men who had been abusive to them, or were implicated in killings that had been carried out by men who were abusive to them²⁴

2 interviews with journalists experienced in reporting on such cases



14 interviews with legal practitioners with experience of representing or prosecuting women who had killed men who had been abusive to them, and 2 facilitated discussions with lawyers

1 interview with an academic with expertise in the legal responses to women who kill their abusive partners.

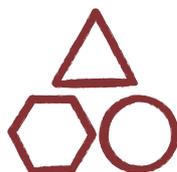
The data obtained from these interviews provides a detailed account of women's experiences of the criminal justice system and, given the rarity of such cases, may represent one of the largest data sets of this type. The data also provides a rich account of the challenges faced by lawyers who represent women in these situations. Researchers also conducted structured observations at six trials, which took place during the period of the research, and received three responses from lawyers to an e-survey (see **Appendix 1** for more details).

Women participants

Twenty women, with a range of backgrounds and life experiences, were interviewed as part of this research:



They were aged
between
23 and 65



15 identified as White or White British
2 identified as Black or Black British
3 identified as Asian or Asian British



10 identified
as having a
disability or
long-term
health condition



They were educated to different levels:
5 women had left school with no qualifications
5 had taken GCSEs
6 had completed further education
(A levels, NVQ equivalent)
1 had a degree²⁵

Secondary data analysis

In addition to the primary data, a range of secondary data sources was examined, including:

23 domestic homicide review reports;

17 case files involving women who had applied to the Criminal Cases Review Commission²⁶; and

data from the 44 police services in England and Wales and data from the Home Office, requested under the Freedom of Information Act 2000.

The study also drew on information in the public domain, including in the media. These sources were used firstly to construct a list of relevant cases dating from 2008 to 2018, to which other data sources could be compared, and then to examine and track the media's response to such cases. See **Appendix 3** for an analysis of media reporting of such cases.

Study limitations

Given that women's lethal violence in the context of intimate partner relationships is rare, the number of cases from which this research could draw is relatively small.

When attempting to access this group of women and practitioners with experience of these cases, researchers encountered a number of barriers.

Accessing women, both in prison and in the community, was challenging and the risks of re-traumatisation were high. The rarity of such cases meant that locating lawyers with relevant experience was difficult, and pressures on lawyers' workloads may have created additional barriers to their participation in the study. It was not possible to have a representative sample of women and lawyers – the majority of women interviewed were in prison (because of difficulties accessing women in the community) and the majority of lawyers who participated had some knowledge and interest in these cases and in violence against women more broadly.

The research team also tried to access other key practitioners in the criminal justice system, including judges and members of the Crown Prosecution Service (CPS). However, after some initial engagement, the CPS did not respond to requests for access, and getting access to interview judges was not possible within the timeframe of the project. Finally, some quantitative data requested from public bodies via Freedom of Information requests was patchy, making it difficult for the research team to build up a complete picture of the prevalence of cases across England and Wales. For further analysis of some of the study limitations, see **Appendix 1**.

Official statistics tell us a limited amount about the number of men killed by intimate partners, and the circumstances of these killings. Office for National Statistics (ONS) data is not disaggregated by the gender of the perpetrator, and does not provide any detail about either party's experiences of domestic violence, abuse or control.

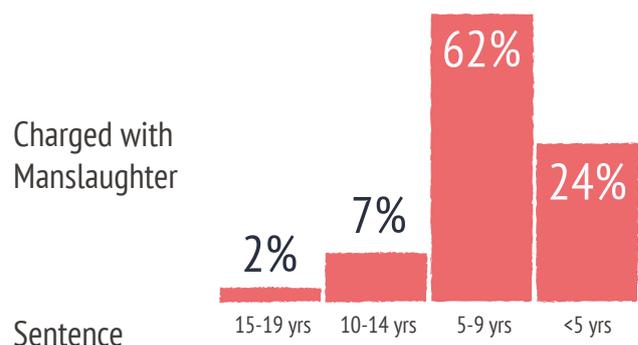
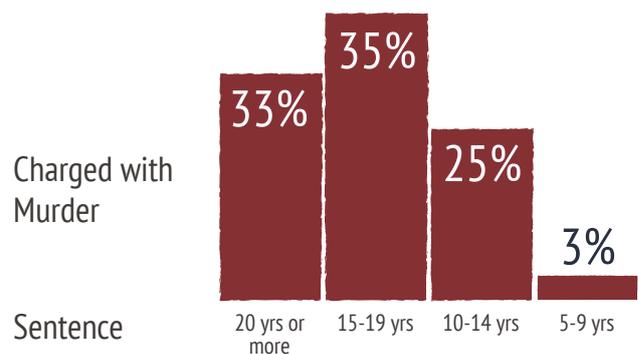
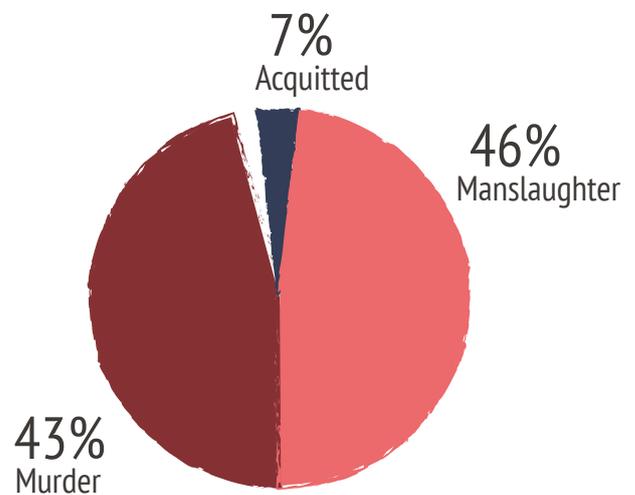
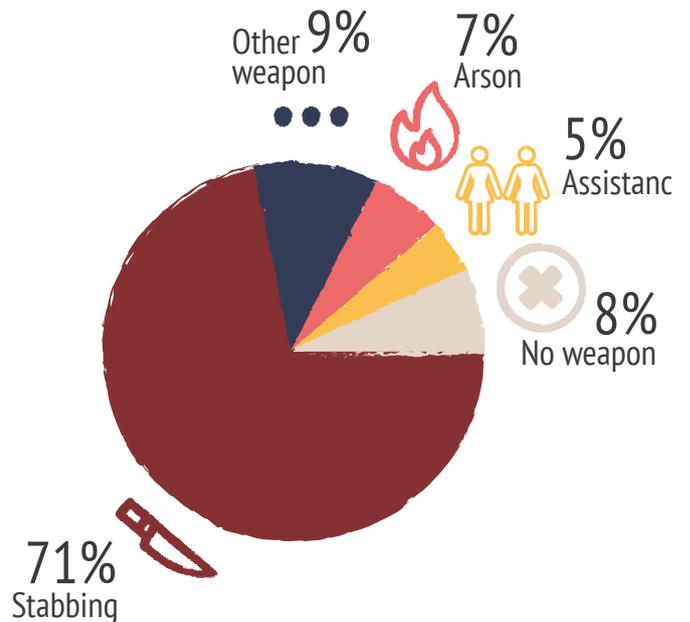
KEY FINDINGS: PREVALENCE AND CRIMINAL JUSTICE OUTCOMES FOR WOMEN

The research team set out to build up a more accurate picture of homicide perpetrated by women within the context of intimate partner relationships in England and Wales. It requested data from the Home Office under the Freedom of Information Act. This data indicates that between April 2008 and March 2018, 108 men were killed by women with whom they had been in a relationship (either at the time of the killing, or previously).²⁷ In comparison, nearly eight times as many women (n=840) were killed by partners or ex-partners during the same period.²⁸ The ONS figure for women killed is not disaggregated by gender, but data shared with the research team by the Home Office²⁹ shows that five women were killed by a female partner/ex-partner during the same 10-year period, representing 0.6% of cases.

To better understand the circumstances in which women kill their abusive partners, the research team collected data on 92 cases that took place over a 10-year period from April 2008 to March 2018.³⁰ In 77% (n=71) of these cases, there is evidence to suggest that women had experienced violence or abuse from the deceased.³¹ This is likely to be an undercount, as the research team relied on information in the public domain (largely media reports) as evidence of a history of abuse, and some women may never disclose the abuse they have experienced to others.

This research found that women are much more likely than men to kill their partner with a weapon, which, as discussed later in this report, has consequences when they are convicted and sentenced. In 71% (n=65) of cases, women had stabbed the deceased; in 9% (n=8) of cases, women attacked the deceased with another type of weapon; in 5% (n=5) of cases, women had physically attacked their partner with the assistance of another person; and in 7% (n=6) of cases, women had set fire to their partner or committed arson that resulted in his death. In contrast to the methods used by men who kill women in the context of intimate partner violence,³² this research found just one case of strangulation.

Of the 92 cases included in this research: 43% (n=40) women were convicted of murder; 46% (n=42) were convicted of manslaughter; and just 7% (n=6) were acquitted.³³ Of those convicted of murder: 33% (n=13) were sentenced to 20 years or more; 35% (n=14) were sentenced to 15–19 years; 25% (n=10) were sentenced to 10–14 years; and 3% (n=1) were sentenced to five to nine years.³⁴ Of those women convicted of manslaughter (n=42): 2% (n=1) were sentenced to 15–19 years; 7% (n=3) were sentenced to 10–14 years; 62% (n=26) were sentenced to five to nine years; and 24% (n=10) were sentenced to less than five years.³⁵



KEY FINDINGS: CRIMINAL JUSTICE RESPONSES TO WOMEN WHO KILL

1.

Lack of protection from domestic abuse: triggers to women's lethal violence

Historic abuse

The literature on women who kill abusive partners suggests that a significant proportion have experienced historic abuse from family members and previous partners.³⁶ The women included in this study are no different. The women in 19 of the 23 domestic homicide review (DHR) cases reviewed as part of this research had experienced historic abuse from a perpetrator other than the man who was killed. This included child sexual abuse, exposure to domestic violence as a child, rape and sexual assault as an adult, and domestic abuse in a previous relationship. In eight of the 20 interviews, women

disclosed historical experiences of abuse, including domestic violence, sexual violence including rape, forced marriage, and physical or sexual abuse in childhood.³⁷

Lack of protection

A common experience of many women who kill violent partners is the failure of the criminal justice system to support them when they were victims of men's violence in the past.³⁸ The DHR reports reveal cases where women had encountered poor responses from the police. Issues included the following:

The police dropping charges, or the Crown Prosecution Service discontinuing cases – including cases of serious assault (five DHR cases).



The police deciding to take ‘no further action’ when called to an incident of domestic violence – including cases of serious assault (five DHR cases).

Women being persuaded by agencies in the criminal justice system to support prosecutions that resulted in lenient sentences (two DHR cases). In one case, the woman reported incidents of strangulation and assault with weapons that resulted in a two-year community sentence.

Eight of the 20 women interviewed as part of this study discussed attempts to leave their violent partners (the men they had killed and previous abusers), and the problems they experienced when trying to seek protection from the police and other agencies. Only one woman reported that her partner had been to prison for domestic violence offences against her (see quote below). In cases where women supported the prosecution of their partners/abusers, some considered the punishments received to be disproportionately lenient, resulting in short community orders for serious violent offences, which left them feeling vulnerable or without a sense of justice. As two of the women participants described:

‘He’d twice been sent to prison for hurting me. He was given three-month sentences, but when he came out of prison he came straight back, then a couple of months later he’d be violent again.’

(Interview 13)

‘They [children] had been abused when they were younger by my ex-husband, which I went to the police about, me and my cousin when we found out... he admitted to it and he got a caution and let off with it. That was it. So I felt like... it really had a big impact on me because I never wanted what happened to me as a child happening to my sons, and it did. Justice wasn’t done.’

(Interview 20)



Another woman noted that even when the courts had issued an injunction against her violent partner, he frequently breached the conditions without any consequence. As she explained:

'I had this injunction out on him and he was still coming to the house at half one, two, three in the morning. Just wouldn't stay away and then I'm in the house on my own.'

(Interview 2)

There are repeated failures to learn from past mistakes, as confirmed by one of the journalists interviewed as part of this research:

'The responses to domestic violence are getting better, but there are often system failings... the murder of X, where she had called the police nine times that day after her estranged husband breached his restraining order and was reportedly in her garden and the police never responded – and then he killed her. I have reported so many cases where there has been some kind of failing to protect women, from the police [or probation or another agency] and there will be an IOPC [Independent Office for Police Conduct] report detailing the same failings, which have been described in many IOPC reports before that.'

(Journalist interview 2)

Under-reporting of abuse

The failure of criminal justice agencies to respond appropriately to domestic abuse is a key factor in the significant under-reporting of domestic abuse.³⁹ The literature notes that even in cases of serious violence, women do not report control and abuse to the police or continue with prosecution, particularly as many know that to do so would put them at greater risk of retaliatory violence or abuse.⁴⁰ The same was true of the women interviewed for this study. Of the 20 women interviewed, less than half (n=8) had reported the abuse to the police. Some of these women disclosed that they had not called the police every time they were assaulted, even when the abuse had included serious physical violence, or attacks and threats involving weapons. Two women reported:

'I should have reported him loads of times, but I think they were only aware of two occasions and the worst one was like when he was trying to kick the baby out of me. That was on Christmas Eve, so I ended up in the morning going to hospital on Christmas Day.'

(Interview 2)

'He told so many lies. He had weapons in his house. He put a gun to my head. Said he had been in the army. Showed me a dagger and said: "Leave me and I will kill you." Or he [said he] would kill himself, and his army friends would come after me and my family.'

(Interview 17)

Of those women who had never called the police, almost all had experienced coercive control from their partner. Coercive control, now recognised as a criminal offence in England and Wales, is a series of behaviours which, on their own and without an understanding of the abusive context, may not appear to amount to criminal behaviour, but when considered cumulatively in the controlling context amount to a

criminal act. For example, requiring someone to dress in a certain way or isolating them from friends or family are typical components of a coercive and controlling relationship. Also common to this form of abuse is 'gaslighting' – manipulating someone to the extent that they question their own thoughts, memories and perceptions, and often their own sanity. Many of the women interviewed described how they did not recognise this behaviour as abusive until much later. For other women interviewed, the fear of reprisals from their abuser prevented them from engaging with the police and other agencies.

Some women may experience additional barriers as a result of their background or life experience, which stop them seeking help. For example, certain communities may have a deep-rooted mistrust of the police because of past experiences of oppression by criminal justice agencies.⁴¹ In addition, women with children may fear that any intervention from the police will lead to the involvement of social services in their family life. This was noted by lawyers who participated in the research:

'If you look at, for example, X's case, she came from a very... working-class family, from a very working-class area of Liverpool where there is no trust of the police, there is no trust of agencies... no real concept that intervention might be available.'

(Lawyer discussion 1, lawyer 1)

'There are additional issues obviously faced by Black and minoritised women in terms of the criminal justice system because of the additional layer of prejudice that exists and also stereotypes associated either with Black Afro-Caribbean women, who may be perceived as more violent, or Asian women, who are sort of seen as submissive.'

(Lawyer discussion 1, lawyer 2)

Impact of non-disclosure on perceived credibility

The issue of women's credibility is central to these cases. There are many factors, including an inability to disclose abuse (see sections on disclosure for further analysis), that lead criminal justice agents to question women's credibility. This can be extremely damaging in an adversarial legal system. For example, in four of the six trial observations, the fact that the women had not disclosed the violence they had been experiencing was a key factor in the prosecution case against them. In one case, the fact that the woman had not told her mother about the abuse was used as evidence that she was exaggerating the abuse experienced.⁴²

In another case,⁴³ a woman had killed a family member who had sexually abused her as a child and had raped her on the day of the killing. However, her account of the abuse she had experienced was rejected by the judge because she had not fought back, she had not disclosed this abuse to the police or other agencies, and she had continued to have a relationship of sorts with her abuser (she was employed as his cleaner). These are all common, stereotypical assumptions about how a victim of sexual violence 'should' behave (see section on 'additional challenges' for further analysis). In another case, the woman had reported the abuse to the police, but had then retracted statements. This was used by the prosecution as evidence that she was exaggerating. In contrast, where women have reported abuse to the police and other agencies, this can help to build a stronger defence.

The triggers to women's lethal violence

Like other research in this area, the findings of this study indicate that women's use of lethal violence in their relationships with abusive men is part of a wider context of current, but also often historic, abuse.⁴⁴ Some of the women who participated in the research described feeling trapped in the relationship at the time of the incident. One woman felt like she was 'drowning'.⁴⁵ Her feelings of being trapped had worsened as she was required to spend more and more time with her abuser at home because she was no longer leaving the house for work:

'It was being with X continuously without any respite that made it worse. Two months before the incident at least I was working and could get away, but over these last two months I felt I couldn't. I felt that I was unable to breathe properly. I had a constant knot in my stomach. My anxiety levels were always heightened. I was shaking and feeling afraid.'

(Case monitoring 1)

For this woman, being unable to take a break away from her abuser had significantly heightened her anxiety. In addition, her partner began to force her into prostitution, which she described as 'being forced to cross a line of my own morals'.⁴⁶ Together, these factors pushed her to a breaking point.

For another woman, a particular incident of violence, which she has trouble remembering in its entirety, had been a trigger. As she explained:

'... the main thing for me, he had strangled me at the bottom of the stairs in front of my daughter. And that... frightened me because you can get punched in the face or your hand broken, but I had never lost my breath before. Thought I am going to die in that minute when it happened. I wasn't even aware my daughter was there. She had obviously come from the top of the stairs and seen it happen. So yes, I was frightened of him.'

(Interview 18)

Although not initially aware, it was only after the event that this woman was able to recognise that she had felt frightened for her own life and, perhaps, even for the life of her daughter as a witness, and had acted to protect both herself and her daughter from imminent death.



This case also illustrates how women may feel that their experiences of abuse have accumulated.⁴⁷ One particular incident of violence may be a trigger to a post-traumatic response situated in past experiences of violence, either in that or another relationship:

'I just lashed out 'cos I was getting flashbacks of abuse by everyone at that time... everything just come to a head, and I just lost it... I wasn't thinking straight, I wanted everyone to stop abusing me... what brought it to a brink was the abuse from my sons and my exes and him and what he was doing. Just pushing me further and further over the edge.'

(Interview 20)

In some cases reviewed as part of the research, the women involved appeared to have exhausted all other alternatives to keep themselves safe, which may help explain why they resorted to lethal violence against their abuser. In one domestic homicide review case reviewed by the research team, the woman involved had taken out numerous non-molestation orders against her ex-partner. She had moved house twice to escape him, and a panic alarm had been fitted at one of the properties. Her case was referred to a multi-agency risk assessment conference twice. The police had been called to 54 separate incidents involving the couple, the majority of which resulted in no further action. In six of the incidents, the police dropped charges because of inconsistencies in her account and, in one case, because

they believed she had lied in a witness statement. The woman's ex-partner frequently breached bail conditions and non-molestation orders, and no action was taken by the police. In one incident, following his release from custody after trying to drown her, he texted her to say 'nothing was going to be done'.

The woman had reported to her independent domestic violence adviser that she had little confidence that the police could protect her, and that she had told the police she had lied about previous incidents because she was terrified of reprisals from her abuser. On the night of the incident, her ex-partner broke into her house and told her to take off all her clothes. She stabbed him in response, and told the police that she believed he was going to rape her. The woman was initially charged with murder, but this was reduced to manslaughter on the basis of diminished responsibility. She was given a nine-year sentence, reduced to seven years and three months to reflect an early guilty plea.⁴⁸

As the literature and findings from this study demonstrate, women very rarely kill men; when they do, it is usually within the context of abuse perpetrated by the deceased. Although a model has recently been developed by Jane Monckton Smith to explain the eight escalating steps that lead to men's lethal domestic violence,⁴⁹ there is no corresponding model to explain the steps that lead to women's lethal violence towards their male partners. Many of the same steps identified by Monckton Smith are present in cases where women kill, but, unlike when men kill women, the escalation of violence and coercion comes from the eventual victim. Thus, it is often the culmination of increasing coercive control of the female partner that leads her, ultimately, to kill the perpetrator, rather than be killed by him. Yet, women's violence continues to be understood through a male-focused framework that will never accurately reflect the dynamics of these relationships and women's status as both victim and perpetrator. This creates problems for women at every stage of their journey through the criminal justice system.

2.

First responders when women kill

Point of arrest

Many of the women interviewed described their experiences of being met by first responders and taken into police custody. For many, this period was characterised by intense shock and complex trauma responses, including initial memory loss, dissociation and suicidal feelings. As one woman explained:

'When I got to the prison [custody suite] I was a mess, partly, I don't remember much about this, they put me in cells and I just lost it. I was banging my head off the walls and everything, screaming out apparently: "He's not dead. He's not dead. I don't believe he's dead..." and then they put me down healthcare. After that, I lost it a bit.'

(Interview 11)

'I don't know if you understand this, but it was traumatic and it was really bad at the time. I had gone into... the police had wrote down 'shell shocked'. I was totally... from the moment they had told me he was gone I couldn't... I couldn't like take it in and "I have got to be with him." I couldn't imagine living with that or just being there. I was very suicidal at the time. So yes, they interviewed me. They thought I was fit for interview straight away. But my solicitor said: "She needs rest. She is not going to give... she basically needs rest." So I had a little bit of rest.'

(Interview 18)



The shock and complex trauma experienced immediately after such an event and its psychological effects mean that women may experience initial memory loss or dissociation. As a consequence, they may struggle to present a coherent account of events, to fully understand their circumstances or to be a good self-advocate.⁵⁰

It is clear from the interview data that women struggled to engage with first responders, including arresting police, custody sergeants, forensic medical examiners and legal representatives. As many lawyers noted, the information shared at this point and the decisions made may have important consequences, particularly when cases are taken to trial.

It is at this point, early in her time in custody, that a woman may be assessed by a forensic medical examiner (FME). The FME has a complex role that involves both caring for, and making assessments about, people held in custody. In cases where a woman has killed a man who has been abusive to her, an FME may need to assess any physical injuries and her mental state, as well as providing a statement about her fitness to be interviewed by the police.

The custody sergeant can request an assessment by an FME, and lawyers can make representations to the custody sergeant for an assessment to take place. One lawyer described the initial police response in a case she worked on:

‘The police were very problematic. In the police station [initially] I repeatedly asked them to assess her. To see if she should have an appropriate adult. They said: “No point”. Then the police were very reluctant to disclose information. Eventually we got data on the call-outs, but not in a helpful way. The police were very adversarial. Prejudiced. Unable to see her as vulnerable in any way.’
(Lawyer interview 8)



Once deemed fit to be interviewed, the decision about whether a woman should invoke her right to silence or participate in a police interview is complex. As one lawyer explained:

‘We made the difficult decision that X should speak in interview – in most situations like that where you have someone who is very distressed, who has just stabbed the person she loves, who has gone through a hugely traumatic event, the advice is ‘don’t speak’, but we decided in this case she should, and it turned out to be a very good decision. The transcript from her interview with the police just after it happened was flawless – it really helped in the case.’

(Lawyer interview 3)

While this strategy worked in this case, for another woman, the trauma encountered had left her unable to recall sufficiently the events leading to the killing (see section on 'additional challenges' for further analysis). Recognising that a late disclosure of facts pertinent to the case might be construed negatively at a later time, she was encouraged by her lawyer to remain silent and make no comment in her police interview. Although this was her legal right, her decision to do so was later used by the prosecution at her trial to undermine the credibility of evidence she later gave in her defence.⁵¹ As her lawyer explained:

'At that stage, she saw her solicitor [at the point of arrest], said to her solicitor: "I don't remember what happened." I suspect most solicitors would say for my client to go into the police interview on a suspected murder allegation and say "I don't remember what happened" would sound really bad. And so better they say "No comment" than say "I don't remember what happened". And so a solicitor at that stage wouldn't know whether that was genuine, whether it was temporary, and so I think it's a cautious but perfectly proper approach. The solicitor advised her to make no comment and so she did. She didn't put forward any account either of the events or of the history. Because she didn't give it [her account of events] to the police when they arrived that was held against her by the prosecution, used against her. When she didn't make a comment in police interview that was used against her.'

(Lawyer interview 1)

Situations such as these highlight the potential complexities that exist along the criminal justice pathway for women who kill violent partners, and the challenges facing lawyers who represent them. Furthermore, such findings indicate the need for training, guidance and protocols for staff who encounter these women in custody.⁵²

Initial legal representation

Women and lawyers interviewed as part of the research highlighted that one of the difficulties women experience at an early stage in the criminal justice process is the selection of their legal representative. Many women had no previous experience of being arrested. Often they were allocated a duty solicitor, or used legal representatives sourced by their families, without realising that they were not experts in defending women who have experienced domestic abuse. Using a legal representative sourced by family members, someone used by a particular community who is unlikely to be a specialist, was a particular issue for women from certain communities.⁵³ Once the initial representation has been conducted by one solicitor, the legal aid rules make it very difficult to change solicitor:

'If your report includes advice for women, please tell them to think carefully about choosing a solicitor; they need to go to a firm with experience. What happens in practice is that they get allocated a duty solicitor at the police station, they do the initial representation and once allocated it's very difficult to transfer... once the legal aid forms have been filled out it's really hard – I have gone to court and really had to fight for a transfer.'

(Lawyer interview 7)

'The courts won't transfer legal aid now – on a matter of principle. Yet in this case so little money had been spent. It was nonsensical. It's about domestic violence and she has a male solicitor she does not trust. There is a female solicitor she wants to transfer to. Surely she should be able to transfer the legal aid? The relationship of trust with your solicitor is so important... the Legal Aid Board clearly failed her and she was left with a solicitor with a lack of specialism, a lack of knowledge of how to run these cases and lack of belief in her.'

(Lawyer interview 14)

This is potentially hugely problematic, given that the relationship between a woman and her lawyer is key to building an appropriate defence. If a woman has a good relationship of trust with her lawyer, it can help with disclosure and giving evidence in court – both vital if women are going to have a successful defence which grounds their actions in the context of the abuse they have experienced.

Prosecutors

The role of the Crown Prosecution Service (CPS) is to ensure fair and just processes in the criminal justice system, not to pursue convictions. Where women's offending is as a result of their experience of abuse, it may be in the public interest for them to be diverted away from the criminal justice system, but in many cases this does not happen.

Police diversion may occur through the use of community resolution, 'No Further Action', Outcome 22 diversion, deferred prosecution or a conditional caution. However, some diversion schemes still specifically exclude those accused of domestic abuse offences, not allowing for any nuanced approach where women are, in fact, facing charges for violent resistance or self-defence against an abusive partner.

The approach of prosecutors in these cases is of huge interest to this research. We were very keen to interview practitioners in the CPS and/or gain access to case files, but, after some initial engagement, they did not respond to requests for access. However, we did manage to interview one lawyer who spoke about their experience of prosecuting such cases.

'When you are prosecuting in these cases, you aren't trying to manipulate the evidence in front of you or look for things that confirm your version of events – you look at all of the evidence and you don't try and hide this evidence from the court, even if it seems messy. That is your responsibility as prosecutor.'

(Lawyer interview 9)



Despite the quite proper approach described above, a number of lawyers defending women in such cases criticised the approach that prosecutors had taken:

'We called witnesses who described her as a slave. There were neighbours and friends, and she used to shop in a certain shop and she would ask to use the phone and she would call her relatives and describe what was happening to her, so the shopkeeper was a witness as he overheard her phone calls... the prosecution would not recognise the abuse though. They didn't dispute it, they accepted it as fact, but they played it down considerably in the trial. They would say things like "He was a flawed man", but there was no acknowledgement of the extent of the abuse.'

(Lawyer interview 7)

'I have acted in several cases where there is significant evidence of history of abuse on the defendant which impacted on her mental health and supported a partial defence to murder, where the CPS could have charged with manslaughter and/or accepted a plea, but have chosen to fight it. This includes cases following a successful appeal where the woman has already spent several years in prison. I have even made detailed written representations citing the CPS's own guidelines on domestic abuse, including their stated commitment to international treaties and conventions, such as the Bangkok Rules, yet these fall on deaf ears.'

(Lawyer interview 6)

'So the prosecution conducted a classic, slightly rough cross-examination and she could no longer endure having to sit there and have the truth thrown back in her face as lies, so she stopped. And... we never saw her again, she didn't return to the court. She did not come back to the court building. She refused to leave the prison.'

(Lawyer interview 1)

In this last case, the woman's refusal to carry on giving evidence had significant implications for the outcome of her trial, which resulted in a conviction for manslaughter and an 18-year sentence.



Key decisions include whether to pursue a prosecution at all, whether to prosecute for murder or manslaughter, and whether to accept a plea from the defendant (where the defendant agrees to plead guilty to a lesser charge). The CPS' public interest test is an important safeguard, allowing for diversion where a prosecution would be contrary to the public interest. CPS guidance on applying the public interest test includes consideration of the context of domestic abuse:⁵⁴

Prosecutors may often be presented with conflicting accounts of the incident, with each party claiming to be the victim... The police should explore the nature of the relationship between the individuals; the context of the offending, including any previous call outs, allegations and/or convictions involving the individuals; and, whether there are any other factors at play... where there is uncertainty prosecutors should request further information from the police to help clarify the situation as soon as possible.

Defence lawyers interviewed as part of the research cited cases where a murder prosecution had been pursued inappropriately in their view, and a number of women interviewed said they had offered pleas that had been rejected by the prosecution. Without access to the CPS, it is difficult for this research study to explain why the CPS might pursue a prosecution or a conviction in such cases. However, defence lawyers offered their own explanations:

'One of the reasons may be that there's pressure from the deceased's family... even in a relationship where there is regular violence and regular abuse and so forth people don't speak... They don't want to countenance that the dead person may have behaved appallingly or violently, and so suddenly they're martyrs, they didn't deserve to die, no one deserves to die and there's an awful lot of pressure I think on prosecutors to go for murder.'

(Lawyer discussion 1, lawyer 1)

'If they don't [pursue a prosecution] I suppose they have to accept that the agencies such as police have failed. They failed those women. If those women are killing because they have no alternative but to kill, then they have been failed by every agency that... could have prevented.'

(Lawyer discussion 1, lawyer 2)

Other research in this area has found that plea-bargaining can be pursued as a strategy by the prosecution, even where there is a recognition that a woman is not culpable for murder.⁵⁵ Pleading to manslaughter avoids the risk of a woman being found guilty of murder at trial. However, avoidance of a murder conviction by pleading to manslaughter may deny women access to the full defence of self-defence, and the chance of being acquitted altogether.



3.

Court proceedings

Trials of women charged with homicide present a number of challenges to defence lawyers, partly because they are so uncommon and, as a result, few examples of good practice exist. Sheehy, Stubbs and Tolmie (2014) identify a number of elements of good defence lawyering in their examination of a case involving the acquittal of an Australian women charged with murdering her violent partner (R v Falls).⁵⁶ Many of the factors outlined in the Falls case are mirrored in this research including, for example, the importance of building an evidential base, providing an interpretive lens through which to view the facts of the case and the skilful use of expert witnesses. This section outlines some of the key factors that have an impact on women's ability to secure justice.

Lawyers' understanding of violence against women and girls

Unsurprisingly, our research found that lawyers' understanding of violence against women and girls (VAWG) is critical to their ability to provide good legal representation to women accused of killing men who have been abusive to them.

A minority of the lawyers who participated in the research expressed views that indicated a lack of understanding of violence against women and girls:

'I do not think it is helpful to think in terms of 'women's justice' or to categorise offenders/victims by gender. Males too can be affected by issues of violence etc and the generalised concept that males are more aggressive than women is unfair and outdated. Every victim, regardless of gender, deserves an equal opportunity to put their case.'

(Lawyer questionnaire 1)

Due to the research methodology, the researchers on this project overwhelmingly heard the perspective of lawyers with good knowledge and understanding of the issues. However, the interviews with women, in line with research from other legal jurisdictions,⁵⁷ made it clear that many lawyers fail to recognise women's experience of domestic abuse as inherently gendered, and therefore fail to understand the social context in which they have killed.

A good knowledge of VAWG and, crucially, the concept of coercive control, is important because it allows a woman and her lawyer to name her experience and to situate her abuse as a form of entrapment and a wider social phenomenon, rather than a case of individual incidents of violence in a bad relationship that she should have left.⁵⁸ As one lawyer explained:

'A lawyer has to have a deep and thorough understanding of violence against women. Of power dynamics that contextualise it. The dynamics of male-female heterosexual relations. How men have power over women... why women stay in violent relationships... the impact of trauma... traumatic amnesia.'

(Lawyer interview 6)





When women are represented by lawyers who have a limited understanding of violence against women, the consequences can be serious, as one lawyer who got involved in a case at appeal stage (after the woman had been convicted of murder at the first trial) reported:

'The prosecution case, of course, was "she gave as good as she got". She had said to the police when they put it to her, that she would fight back. Her defence solicitor did not understand. He did not think she was telling the truth. He said: "She just kept on with this battered wife story. She didn't look like a battered wife. She was not cowering in the corner." She was not believed. So instead of relying on her account and getting a psychiatric report, he was looking for objective evidence [independent reports of the abuse from agencies/third parties] all because he did not believe her. She knew this. She clammed up. She did not want to disclose the extent of the abuse to him.'

(Lawyer interview 5)



Very few lawyers have experience of representing women who have killed or inflicted serious violence. As one research participant noted, defence lawyers, due to the much higher numbers of men who commit violence,⁵⁹ are almost invariably going to have far more experience representing men:

'Finding a defence lawyer who is really committed to that woman, that's vital, but it's rare to find one... defence lawyers aren't trained to defend women. They are trained to defend rapists and murderers and paedophiles, and these are largely men. They don't know how to defend women.'

(Expert interview 1)

One of the reasons why it is important for defence lawyers to have a good understanding of violence against women is that it can help them to identify the most appropriate defence to run. However, this relies on their being able to understand domestic abuse and coercive control as a pattern of behaviour, as this lawyer highlighted:

'If you have a lawyer who understands VAWG, this helps. I understand the dynamics of domestic violence and how it starts, that it's not about the first time he hits her but what happened way before this... if you don't understand this, you won't realise that information that the woman is telling you, or witnesses are telling you, that they might think is insignificant, is actually really important. Building up a picture of abuse for the jury involves the incidences of coercive control that might seem minor on their own. If you don't understand VAWG, you won't see this as a lawyer.'

(Lawyer interview 3)

The difficulties of arguing self-defence

However, even for those lawyers with a good knowledge of violence against women, arguing self-defence successfully is notoriously difficult. Self-defence requires a proportionate response to the threat faced, and the difficulty is that women will usually use a weapon against a man they know to be capable of brutal, bare-fisted violence. A number of lawyers interviewed as part of this research commented on the challenges involved:

‘The problem with self-defence is that it’s a risky defence... you can try, but you wouldn’t want to try it on its own, you would run it in tandem with something else... the presence of a weapon against an unarmed person, people don’t like the presence of a weapon in self-defence cases.’

(Lawyer interview 4)

‘We argued self-defence in her case... it wasn’t an easy decision, and the legal team was nervous... it’s always difficult as the stakes are high and it’s people’s lives – if you go to trial and you lose, defendants are facing much longer sentences as a result of those decisions.’

(Lawyer interview 7)

Sheehy notes that in the Canadian case of *R v Falls* self-defence succeeded, despite the woman not being attacked at the time. However, she was able to rely on the 'slow burn' effect of domestic abuse over time. The research team are not aware of any such cases in England and Wales where self-defence has succeeded when the defendant was not being attacked at the time.

The relative rarity of running a successful self-defence case was confirmed in the research. Of the 92 cases included in the study, just six women were acquitted on the basis of self-defence. In addition, there were 14 cases where women had tried to run self-defence as part of their defence, but they were not successful and were convicted of either manslaughter or murder. This may be an underestimate, as it was not possible to track accurately the various defences used by all the women who were included on our case list, due to the limited information available about some cases.

Building trust and investigating the context of abuse

Late disclosure, partial disclosure and non-disclosure all have significant implications for women and their defence lawyers when putting forward a defence that situates the killing within the context of abuse. As outlined previously, the fact that many women do not disclose the abuse, or the full extent of the abuse, to the police or other agencies is often used to discredit or minimise their experiences of abuse. In addition to dealing with issues of disclosure, defence lawyers often face inconsistencies in evidence. For example, women, because of shock, denial or fear, may initially lie and then retract their earlier statements.⁶⁰

The research findings demonstrate that good practice by lawyers involves taking time to build trust, to enable disclosures and to investigate fully the background to and context of the abuse. Doing this takes time, skills and resources which, as several lawyers reported, are often lacking:

‘What would help [when asked what would help lawyers representing women in these situations] is knowing how to speak to her [client]. How I could have approached her – she had a problem with trust. Probably due to her experience. And the system does not give you the time to build up the trust. Nor does it fund it. Legal aid has been cut. You don’t have as long to spend with a client as you used to.’

(Lawyer interview 8)



'Although I was male, I was alert to the danger that she may not speak to men so I got a female solicitor from the firm to see her regularly. I cleared my diary for a month before the trial and saw her 14 times in prison. She was so vulnerable. So much a victim. She was looking at life imprisonment. I was only paid for two conferences. I had 14. A lot of people would say, "Why would I?" But it is all set up against someone in her circumstances.'

(Lawyer interview 5)

Good lawyering also recognises that, in such complex cases, where abuse has often lasted for many years and may also involve historic abuse or abuse which has never been disclosed to anyone before, women need time – time to recover from shock, to tell their story and to piece together events that may have become fragmented. During the periods of emotional distress and disconnection that can often occur in response to trauma, it is particularly difficult and re-traumatising for women to be engaged in preparing or giving evidence. These difficulties, and the time and effort needed for case preparation, are likely to be greater if the woman is in prison. As one lawyer explained, arbitrary time periods create an unnecessary pressure that is counter-productive to the task of disclosure. They said:

'The process of disclosure of abuse, particularly sexual violation, requires trust and can take a long time, particularly where the woman concerned has not talked to anyone about the abuse previously. Furthermore, if the woman is in prison, talking about deeply traumatic experiences can have mental health consequences. Obtaining a full account in six months or less will often require a significant commitment from the lawyer, particularly in circumstances now when legal aid pays by the case rather than the hour.'

(Lawyer interview 6)

When lawyers are unable or fail to do this, there can be serious consequences for the woman at trial. One case, picked up at appeal where a woman had received poor representation at her first trial, demonstrates the complexity and emotional trauma that may be present under the surface in such cases and why it is necessary that women are given time and space to disclose within safe trusting relationships. As the woman's lawyer explained:

'This woman, who was in her 60s, had been raped by her adult male son on numerous occasions, and she had killed him. This is a hugely sensitive experience to talk about, involving a lot of trauma. She clearly felt a lot of shame. It's not surprising she didn't want to disclose this to a man with little understanding of VAWG [white, male solicitor in his early 60s].'

(Lawyer interview 3)

When lawyers do not take the time to build a trusting relationship with their client, this can make it more difficult for women to give evidence effectively in court, as one woman who was interviewed outlined:

'I had seen the barrister with the solicitor once or twice. I had not spent much time with him... In court I had no chance to explain the history. I could not refute the accusations in court... If I was more prepared. I said things like "I suppose so". Then I shut down. I was very depressed by then; I was very quiet. If [only] they had done something like go through the questions they were going to ask me... I think if I'd been prepared to tell my story I could have. But I was not prepared.'

(Interview 7)

However, even in cases where women have developed a positive relationship with their lawyer, this may not be sufficient to overcome the hurdles presented by other aspects of the trial process, as one woman reported:

'I got on well with my solicitor; we talked a lot about control and sex. She did a thorough job. Then when the prosecution said they were not going to take my plea, my relationship dwindled with X. It was an avoidance thing, even though it wasn't her fault. I just thought what's the point and I withdrew from people. Leading up to the trial, I kept not going to our meetings. I was shutting down.'

(Interview 9)

The research found that the relationship of trust between a woman and her lawyer, and her ability to disclose the abuse she has experienced, can be crucial to the success of her defence. Therefore, in some cases it may be more appropriate for women to be represented by female lawyers. This was highlighted by both lawyers and women interviewed as part of the research:

'I couldn't open up about the childhood abuse. Then you have two men [lawyers]; they are not the 'go to' people. There is a barrier... after it happened I was in such shock. It was such a blur and then you are presented with two men who you don't know. I don't think I helped them... I couldn't talk to them.'

(Interview 16)

'In these types of cases you need to think carefully about whether it's appropriate to have a man representing a woman who has killed her violent partner, if it prevents building that relationship.'

(Lawyer interview 12)

Building a trusting relationship between a woman and her lawyer may be more challenging in some situations than others. **Appendix 2** highlights how for some women from very conservative South Asian communities, who may have lived their lives effectively in purdah, the ability to open up to male lawyers, may simply be unfathomable.

Barriers to women's disclosure of abuse

One of the reasons a relationship of trust between a woman and her legal team is so important in these types of cases is that it helps women disclose the abuse they have experienced. The research findings show that late disclosure of abuse is common, with some women failing to disclose until after they have been convicted.⁶¹ This is clearly hugely problematic for building a defence which contextualises a woman's use of lethal violence in the context of abuse.

The extent to which abuse can remain hidden became apparent in the interviews with women. In some instances, secondary sources, such as domestic homicide review (DHR) reports, which are supposed to provide a detailed analysis of each domestic homicide, had not uncovered abuse which women later disclosed in interview. This is hardly surprising in many cases; some women decline to take part in the DHR process, so their experience of abuse may be absent from the review. The rapid timescale of DHRs may also mean women are not ready to disclose – for many women interviewed, it was not until they had accessed therapeutic support that they were able to put into words their experiences of abuse. This was particularly apparent in cases where women had experienced coercive control.

Identifying coercive control

'They [defence lawyers] asked me if he abused me and I said no, but I didn't know controlling, I didn't realise control was a part of abuse at the time. It's only because I've done therapy that I know that now. I thought it meant hitting me.'

(Interview 20)

'I told him [duty solicitor] about the relationship but I didn't have words. I didn't really see what had been happening to me. Later I analysed really what he had been doing to me... I did the Freedom Programme.⁶² It was a real eye-opener... it opened my eyes to the kind of thing men do. I realised that had happened to me too. With X it was a drip feed. I was 15 when we met. Naïve I was. He could charm the birds off the trees.'

(Interview 7)

The academic literature exposes how difficult it is to identify and address coercive control, describing low levels of understanding among women, the public and agencies in the criminal justice system, who tend to focus on the more visible physical violence and its consequent injuries.⁶³ It has only been relatively recently, following Evan Stark's work,⁶⁴ that awareness of coercive control has grown. Coercive and controlling behaviour was only very recently introduced as a specific criminal offence in England, Wales and Scotland, and there is planned legislation to include this in a new domestic abuse offence in Northern Ireland.⁶⁵ However, the value of introducing this as an offence is contested by sceptics, who argue that where understanding of coercive control remains limited among the police, prosecutors, judges and juries, a new law will have little impact.⁶⁶

Some expert legal practitioners and activists, however, have a more pragmatic view. They argue that individual cases (such as Sally Challen's appeal, which relied in part on evidence of coercive control) make a difference because they raise awareness of coercive control and bring attention to feminist activism and scholarship. This, in turn, helps to create a new narrative for women in which to describe their experiences, and allows the criminal justice system to understand those experiences sufficiently well to be able to take them into account within legal argument and decision making.⁶⁷

Not 'speaking ill of the dead'

In addition to the above factors, women may feel a complex set of emotions towards a man who was both abusive and loving towards them. They may also feel deep guilt and remorse for taking his life. Some women who were interviewed reported that they did not want to speak ill of the men they 'loved'. As one woman described:

'I didn't want to kill my boyfriend, but there was a lot more behind it. As much as I tried to tell them, but they were not really listening... it was hard as I loved him and didn't want to bad-mouth him, but they [the court] needed to know [history]. And then I think they [lawyers] don't really approach it the right way. Does that make sense? Nobody cared.'

(Interview 15)

The research found that some lawyers had actively discouraged women from speaking about the abuse for this reason, even when they did try to disclose their experiences:

'I remember my lawyer said: "Juries don't like it if you speak ill of the dead.'"

(Interview 7)

'They only ever brought up the ones that was recorded [incidents of abuse]. To be honest, I played it down as well because he was dead. I felt guilty... He [lawyer] said be careful about speaking ill of the dead because he can't defend himself and the jury will probably see it as you trying to blame it on him.'

(Interview 4)

Even those lawyers who had worked hard to encourage women to share their experiences of abuse identified this as a challenge for defence teams:

'The extent to which there is a sense of, whenever you say these things about the deceased, how unfair he's dead, it's huge... you would say that, you can say that, you were the one who killed him and now you're attacking his character and you're able to do so without contradiction from him because he's dead. Forget reluctance on the part of the defendant to do it, the starting point is that he's dead, he can't speak for himself now. And you might be fortunate whereby you've got independent evidence of it, but you don't always have it. So that's the first problem.'

(Lawyer interview 1)

Cultural factors around disclosure

The problem of identifying a perpetrator's behaviour as abusive and making a disclosure can be exacerbated for women from non-White backgrounds, where controlling, abusive and violent behaviour may intersect with other cultural factors to create greater complexity and isolation for those women. As one South Asian woman explained:

'So because I felt a second-class citizen with my community as it was, I couldn't tell them the truth even though I wanted to tell them the truth. I was too scared for anyone to know the truth... I didn't speak to my solicitors properly until I came to prison, about maybe six months after I came into custody. I didn't speak to them about anything. Until about six months later.'

(Interview 19)



A lawyer who had represented a South Asian woman who had killed her abusive partner at appeal stage reported:

'It was not disclosed at all during the first trial. She denied she was responsible for killing him. She admitted to there being 'some tension' in the relationship... He survived for a few days and told everyone it was an accident. This provided her with the opportunity to allow a fabricated defence to be put forward, however implausible the evidence and the risk of conviction, rather than violating community codes of shame and dishonour by speaking of the abuse which ultimately led her to kill.'

(Lawyer interview 6)

For further analysis of the impact of cultural factors on women disclosing abuse, see **Appendix 2**.

The positive impact of enabling disclosure

One lawyer with experience of representing women successfully in these cases reported having to gently encourage women to disclose, despite their reluctance or the emotional consequences. While some lawyers may not know how or may have felt uncomfortable doing this, others persisted, taking time, building trust and taking it slow. As one lawyer explained:

'The traditional approach is to ask a client to tell their story, and then you build a defence based on that story. In these types of cases, and certainly with X, I had to dig deeper. You need to bring out the story from the woman, and they may not be willing to discuss that story initially. Talking about the abuse takes them back there, and for some women this may be too traumatic. I spent a lot of time with X, building that relationship, talking to her, encouraging her to tell me what really happened. In the end, I had to say that I couldn't force her to tell me, but that if she did it would significantly help her situation. We got there in the end but with a lot of sensitive work from [other members of the legal team].'

(Lawyer interview 12)

When women are able to talk about their experience of abuse, this can make all the difference.⁶⁸ One lawyer explained how this contributed to their client's acquittal:

'X was very articulate and willing to talk about what had happened to her – our evidence statement was 45 pages. I've seen evidence statements in similar cases that are two pages, where the women haven't really disclosed what was happening and the lawyers haven't asked the right questions to find out.'

(Lawyer interview 3)

Giving evidence in court

As we have seen, trauma and shock, as well as shame and victim-blaming, contribute to late disclosure, non-disclosure, withdrawal of disclosure and untruths that emerge at various points along a woman's journey through the criminal justice system. The challenge for lawyers is to ensure this behaviour is understood for what it is – namely, a normal response to trauma in the context of gendered, and sometimes cultural, expectations and pressures – rather than indicating a lack of credibility. There is some understanding within the criminal justice system that inconsistencies in accounts may be a factor in cases of sexual violence, and judicial directions may be given,⁶⁹ but these research findings suggest that this recognition has not filtered through to cases where women who have been subjected to abuse are defendants, rather than witnesses.

Women may disclose the abuse they have experienced to their lawyers, however for cases going to trial they may also be required to give an account of the abuse to the courtroom. This can be extremely challenging and relies on a skilled defence lawyer to prepare for this experience. As one woman said, this does not always happen, and yet women will often wrongly blame themselves:

'There was no emotional or mental preparation for trial. You are going from the cell into a courtroom. I was terrified of the unknown. My legal team could have helped me prepare better. I couldn't open up and be close enough to them to talk to them properly. It wasn't their fault, it was my fault. I felt too closed... when I talk to girls here, it is as though they are friends with their solicitors. It is my fault. They didn't make any attempt to break down the boundaries. There was no attempt to get me to see a professional.'

(Interview 16)

Another challenge women may have to face is giving evidence in front of the deceased's family and friends. Some women highlighted this as a major barrier to disclosing the full extent of the abuse they had experienced:

'During the trial I didn't want to talk about when the relationship was bad. His family were all there and I didn't want to properly address what he was in front of his family. In the forefront of my mind I knew I'd murdered him and that was enough. I didn't want to be embarrassed saying what he'd done to me... there was something else that I didn't tell the court... a couple of days before the incident he said he would suffocate my two boys. He gave me Rohypnol and raped me, and then he said he was gonna kill them and make me take the blame.'

(Interview 9)



'It didn't come out at trial. That had an effect on everything. I didn't want to go into the abuse. I was friends with his brother... I knew his family were there. This made me feel terrible. My brother killed himself and I know how it devastated our family. X was really close to his brother. I don't know how he must have been feeling... I think this stopped me opening up. His daughter is only 13. You don't want to hear horrible things about your dad.'

(Interview 16)

If a relationship of trust has been built throughout the evidence gathering and preparation phase of the process, this will help to support women through the experience of giving evidence, which many women noted is extremely stressful. In the words of one woman:

'And when I was on the stand I sort of went into my own world a couple of times, I can't explain it I was so scared. I remember I didn't know someone had asked me a question and I remember the judge saying: "Can you answer the question?" I remember him looking at me. I remember thinking he doesn't like me. I just felt it and I was right.'

(Interview 18)



Exploring abuse in the courtroom

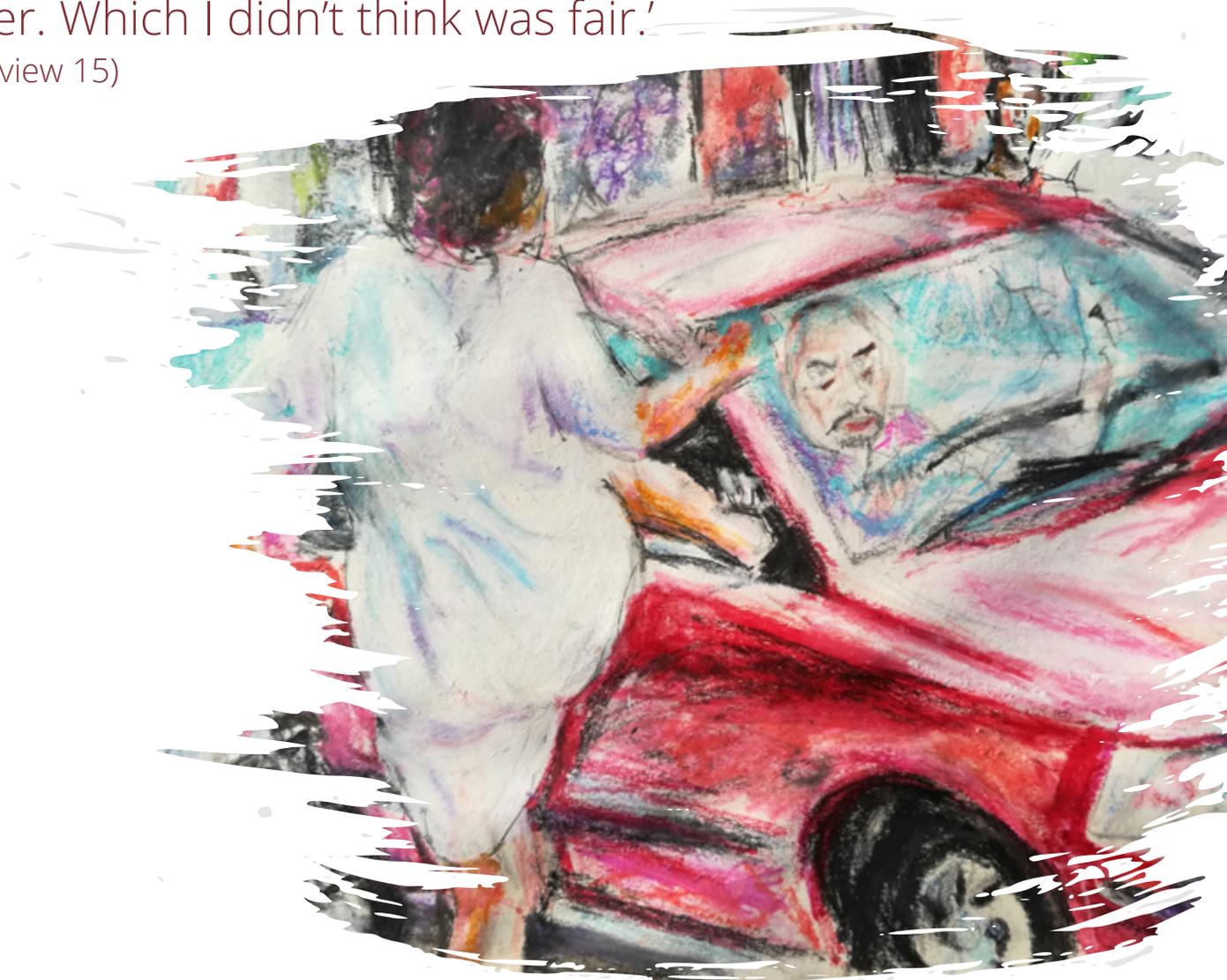
Although a defendant is not required to give evidence in court, this research found that lawyers' understanding of VAWG, and their ability to commit time and resources to preparing women for giving evidence in court, is crucial for building a successful defence. In addition to supporting women to be able to give an account of the abuse they have experienced, they must also construct a narrative of that abuse for the jury by asking the right questions and exploring the abuse fully, not just mentioning it and moving on. Unfortunately, for many of the women interviewed as part of this research, this was not their experience. Several women said their lawyers had failed to explore the abuse sufficiently in court.

'Yeah, I was asked about it [the abuse]. But I was told only to answer questions that I was asked. Not to go into anything when I could have really given more. So I wasn't really asked that much... they didn't know about how, like, four/five days out of seven he was getting drunk, I was getting attacked with knives and thrown down the stairs.'

(Interview 2)

'I know it was both of us, but I didn't go to the extreme of giving black eyes and more. There was so much more to it... all the jury knew was from the moment I got dressed to go out, to the end where I was arrested. They got told it was a "volatile relationship"... they didn't know why it was a volatile relationship... I wanted to explain to them the reason I did smash his car was because he told me he was glad the baby was dead, and I was a slag and I bet it ain't even his. So obviously I picked up a load of stones and lobbed them at the car. I wanted to explain to the jury why it was volatile, but all they knew was, it was both of us, as bad as each other. Which I didn't think was fair.'

(Interview 15)



This last quote demonstrates the tendency to focus on the immediate time period surrounding the killing, which, as this woman explains, reveals only a fraction of the picture of the abuse. Women may be presented by the prosecution through a lens of emotion and rhetoric, and it is the role of the defence lawyer to identify and challenge these rhetorical devices and narrative techniques. *Sheehy et al* (2014) advocate that defence lawyers should draw on emotional effect in order to connect those in the courtroom with the emotional experiences of the abused woman and provide a convincing counterpoint to the prosecution's framing of the case.⁷⁰ As two participants in this study noted, it may even be necessary to use the terms, phrases and strategies of the abuser to connect viscerally to the woman's experience of her abuse. One expert explained:

'The use of rhetoric and metaphor can be powerful. I have seen lawyers use the words that an abusive man might have called her in the courtroom, using them over and over to recreate that sense of what it might have been like for her in that relationship.'

(Expert interview 1)



A lawyer who had adopted this strategy in court explained:

'In X's case I had to become the abuser in the courtroom. Stopping short of what actually happened, it is essentially a re-run of the abuse. X was in tears, women on the jury were in tears, it was extremely emotional... It takes guts for lawyers to go there – it takes time, a considerable amount of empathy, and sensitivity... the two key approaches that are needed is making sure women are given space to tell their story, and providing them with support... you have to go through that process so the jury sees, and the court room sees – but it's about preparing someone for that and mitigating the impact through support.'

(Lawyer interview 12)



As this lawyer recognises, this is an emotionally challenging approach that can be effective when used by experienced lawyers, but it requires time, professional support and high levels of trust. Building trusting relationships and taking time to gather a detailed history are crucial to enabling the court to understand the complex and cumulative nature of abuse and its consequences for the woman accused, and thus the reasonableness of her reaction given the circumstances she was faced with. As one lawyer reported:

‘She had also had a traumatic life, she was abused as a child. Her mother used to go out to work and leave her with the neighbours, and one neighbour used to abuse her. He would hang her up on the coat hooks by her clothes, use her as an ashtray. She was only eight or nine at the time. The jury sympathised with her, they recognised that she had had a tough life. We were able to paint this picture of the cumulative impact of abuse, both historically and then on the night of the killing, and that her reaction to her friend being assaulted by this man was a result of her heightened sense of fear, which was reasonable in the circumstances. To do this effectively, you need to tell the full life experience, not just what happened on the night.’

(Lawyer interview 7)

In some cases, despite their lawyers' best efforts, women are unable to give evidence. One lawyer described how a woman was persuaded to continue giving evidence on a limited basis:

'I said: "X, we know how difficult this is, we're all aware of how difficult it is" and she was sobbing. I said: "But if I ask you questions where all you have to do is say 'yes' or 'no', or just give really, really short answers, would you answer my questions?" It was only because of the trust that we had, we'd built up a fantastic relationship of trust and for weeks and months before the trial had begun and during the whole trial, that she actually has told us since: "It was only because you asked me [to carry on giving evidence] that I said yes."' (Lawyer interview 1)

A similar situation occurred in one of the trial observations. A woman was accused of murdering her uncle, who had sexually abused her from age nine. She was required to give evidence over a period of three days. This included having to recall the day in question, on which she was raped by her abuser before she stabbed him in self-defence (her primary defence). She became so upset in court that she could not continue giving evidence, and announced in front of the jury that she wished to change her plea to guilty 'just to get the trial over with'. Her defence lawyer asked the judge if she could have a break from giving evidence, but this was refused. She was seen by a psychiatrist who declared her fit to continue giving evidence, but she refused to do so. This woman was subsequently found guilty of murder and sentenced to 27 years – one of the longest sentences given in the cases included in this research.⁷¹

As this case demonstrates, the consequences for women who cannot give evidence in court can be catastrophic. One lawyer told the research team:

'Credibility is everything – the jury need to feel that the defendant is credible. That was one of the main issues in the X case, she lost her credibility when she stopped giving evidence.

(Lawyer interview 9)

This was also a major theme in the Criminal Cases Review Commission file review. In 14 of the 17 cases reviewed, women raised concerns that their experiences of abuse had not been considered effectively during their trial and, in some cases, during their appeal. Some of these women had experienced memory loss as a result of the abuse or the incident itself, and since being in prison had been able to recall more of the abuse or of the events surrounding the killing, sometimes after accessing therapeutic support. Other women had not felt able to disclose the abuse at the time of the trial, including two women who felt inhibited for cultural reasons. And finally, there were women who had disclosed the abuse, but felt their lawyers had not presented it effectively to the jury. This included not presenting evidence of abuse where available (witnesses, records of phone calls) and not presenting evidence of the deceased's bad character (including violence to others).



The role of the judiciary

The role of the judiciary in ensuring access to justice for women who kill abusive men is a vital component of this research. Unfortunately, the research team was unable to gain access to judges to hear directly their views and experiences of presiding over such cases. As a result, this research can only offer some limited findings, mainly drawing on interviews with lawyers. Further work exploring the role of the judiciary would be a valuable contribution to this area of research.

As highlighted previously, the understanding of violence against women and girls (VAWG) among practitioners in the criminal justice system is crucial if women are to be given the space to locate their actions within the context of a history of abuse. This applies from their first contact with the police right through to conviction and beyond. Judges have a critical role to play in the trial process – instructing the jury, deciding what evidence is admissible, determining sentences and generally controlling the way a case is conducted.

Lawyers highlighted this important role and provided examples of cases in which the judge's lack of understanding of VAWG had a strong influence on the outcome. As one lawyer, who had experience of representing two women where the facts of the cases were similar but the outcomes were very different, told the research team:

'What these two cases tell you is that it's not about the rules, it's about the judges. The facts were quite similar... A conservative judiciary is more of a problem for these types of cases than the letter of the law.'

(Lawyer interview 10)

This was a key factor in one of the trials observed by the research team,⁷² where the woman had been subject to physical, sexual and psychological abuse over many years, including assaults, strangulation and threats with weapons. However, in the years leading up to the killing the deceased had limited his abuse to coercive control and sexual violence, as he did not need to use other forms of violence to exert complete control over her. The judge in this case concluded that 'there had been no violence committed towards her from the deceased in the years leading up to the killing', although he recognised that 'there had been non-consensual sex' – demonstrating a very limited understanding of coercive control and sexual violence.

Given their relative power in the trial process, judges could play a much more active role in ensuring women's experience of abuse is interpreted more accurately by juries, in the same way as they give directions on myths and stereotypes in rape trials – for example, cautioning against the common myth that the way a woman dresses or behaves suggests she must have consented to sex, or against making assumptions because of the way a person reacts during and after being raped (such as not fighting back or delays in disclosing/reporting). As outlined previously, many of these same stereotypes (and others) are relevant in cases where women have killed their abusive partners, but there appears to be a reluctance to take action to address them when a woman is also a perpetrator of violence, rather than just a victim.



4.

Additional challenges

There are some common features in the cases analysed by the research team that present additional challenges for lawyers representing women in these cases.

Inability to remember the fatal event

Memory issues were present in many of the cases analysed. Some of the women interviewed remembered what had happened at the time of the incident. Sometimes their recollection returned at a later date, but some had never been able to remember the critical moment when they inflicted the fatal injury. There are a number of reasons for this, which can include traumatic amnesia, denial or intoxication at the time of the offence. One woman explained:

'The main thing for me was that I would never, never, never in my heart or head hurt anybody. I still do not know to this day exactly what happened. I don't have recollection. And I hate it. I want to know what happened. It pains me every day. To not know.'

(Interview 18)

In an adversarial legal system, the inability to remember crucial events can be construed as a strategy – namely, that women remember only what is useful to their case and that they are malingering:

'They played, they played the tape, what, when I phoned the ambulance and I phoned the police but even though they played the tape I can't remember what I said or done... the prosecutor said I had selective memory.'

(Interview 20)

Lawyers highlighted memory issues as problematic in these cases. One lawyer reported:

'Memory is a problem. Women, or any defendant in a serious crime, may lose their memory of an incident because it was so traumatic and they are pushing that memory away, or there may be some neurological reason, something that has happened to the brain which stops them recalling it, but the problem is it's virtually impossible to be sure.'

(Lawyer interview 9)

A woman's ability to recall the sequence of events may vary at different stages of the criminal justice process. This can lead to inconsistencies in her account. As one lawyer highlighted:

'Then you have the added complications... which is the difficulty that you have in women saying the things that they have to say, when the police first turned up, in their police interview, to their solicitor, within the trial. And at all stages of those four, they find it really difficult.'

(Lawyer interview 1)

Another lawyer commented that, in their experience, when a woman cannot remember what has happened, she may put forward an implausible explanation of events as she feels pressure to provide some explanation to the police and criminal justice agencies. This then unravels in court, and, by that stage, it is too late to advance a more suitable defence of diminished responsibility:

'What the convicted woman has said about the stabbing, for example that it was an accident, is taken at face value. The trial then proceeds on the basis that a stabbing was an accident, which is virtually impossible for that to happen and so she is seen as being, the defence is seen as being, implausible. The psychiatric defence [diminished responsibility] on which she may have, well, she might have succeeded, has not been explored and is not put before the jury.'

(Discussion with lawyers 1, lawyer 2)

The two lawyers who participated in this discussion were of the view that a skilled lawyer, with a good understanding of violence against women and girls, who takes time to build trust with a defendant, can unearth a more accurate version of events at an earlier stage, which will help to build a more appropriate defence for women facing these types of charges. The trial process is also equipped to deal with inconsistent and improbable explanations that are given or devised in the above circumstances. For instance, a forensic psychologist can be instructed to administer a TOMMS test⁷³ and/or give evidence on the inability to remember a traumatic event. The use of experts to explain traumatic amnesia, for example, is sometimes a feature of sexual violence cases, where women who have been assaulted are unable to remember or give a consistent account of the incident. However, our research found that this understanding has not seeped through to other types of criminal cases where women are both victims and defendants. The use of experts is discussed in further detail below.

The proposition that memory issues are significant was evidenced in the Criminal Cases Review Commission (CCRC) file review. In five of the 17 files looked at,⁷⁴ memory issues and inconsistencies in women's accounts were found to be key. In two of these cases, the women could not remember what had happened at the time of the incident, and have since been able to recall more information about the killing while in prison as a result of accessing therapeutic services. In another case, the woman involved gave inconsistent accounts of what had happened at the time of the incident, leading the judge to label her 'an inconsistent historian' in the original trial. And in two cases, the women involved still cannot remember what happened at the time of the incident.

Memory issues were also a key feature in two of the six cases observed at trial. The women on trial could not remember what had happened, and both the prosecution and the judge focused on the 'inconsistencies' in their respective accounts.⁷⁵

Violence 'on both sides'

Another common feature of these cases is that the abuse perpetrated in the relationship is portrayed as equal on both sides – that 'she gave as good as she got'. Clearly, when women have perpetrated lethal violence, there will be a focus on any evidence of violent behaviour that she may have exhibited in the past. However, this research found that women's violent behaviour is often over-emphasised and given more gravity, while men's violent behaviour is minimised.⁷⁶ See **Appendix 3** for further analysis of how this is portrayed in the media.

This is made worse by the poor response of criminal justice agencies to men's violence against women. Analysis of DHR reports demonstrates how common counter-allegations of abuse are when police are called to incidents of domestic violence.⁷⁷ This provides 'evidence' of women's violent behaviour, which may have been fabricated by her abuser or is a result of women defending themselves against physical attack. One woman told us:

'Our relationship was violent – we used to drink a lot together – and sometimes one or other of us would call the police. I'd call them about him pushing, shoving and choking me, and he'd call them about me pushing and slapping him.'

(Interview 13)

This woman's account demonstrates the different experiences of men and women in intimate partner relationships which are abusive. While there may be incidences of violence perpetrated on both sides, men's violence towards women is usually more serious and sustained.⁷⁸ Another woman reported how her attempts to defend herself from sexual violence were used against her in court:

'They [the prosecution] did say that once or twice he came to work and had a few scratches. That is right though. I did admit to that. It was when he was trying to force himself on me [sexually] so many times. I had like lashed out and accidentally scratched him. But that was the extent of it. Nothing other than a scratch.'

(Interview 5)

Abuse being presented as equal on both sides was a factor in three of the CCRC files reviewed by the research team. In one case,⁷⁹ where a woman killed her abusive partner who had been attacking her with a baseball bat at the time, the judge stated that there 'was violence on both sides and everything I have read about the relationship indicates that you were well able to look after yourself.' He also dismissed the account presented in the woman's pre-sentence report that 'seeks to paint you as the victim in the relationship, and I reject that.'

In the other two cases, women had been given sentences of imprisonment for public protection due to their 'violent' behaviour. In one of these cases,⁸⁰ this was apparently because the judge believed the woman had brought a knife to the scene, which she disputed (the prosecution accepted that either party could have done so), her history of drug abuse and her 'aggressive personality'. In the second case,⁸¹ the reasons given for the prison sentence were the history of violence in the relationship with the deceased and two separate incidents of 'glassing' involving other people that the woman denied and in relation to which no charges were brought. The judge also stated that the woman had an 'unstable personality, alcohol and drug consumption, and a lack of insight'. In her application to the CCRC, the woman explained that she had been abused by the deceased, was defending herself at the time of the incident, and said, 'I strongly believe that if X hadn't died, I would have.'



Myths and Stereotypes

Myths and stereotypes regarding how someone who has been abused should behave can also intersect with the factors outlined above, with negative consequences for women. As one lawyer explained:

'If women don't fit the stereotype of a victim, this can be a problem. X was loud, she was a Scouser, she answered back, she wasn't the typical victim and that didn't work well for her in court... it's the same when I represent children, they need to play a role.'

(Lawyer interview 10)

This example illustrates how stereotypes can be harmful for all women, but especially when they are combined with misconceptions based on class, race or culture. **Appendix 2** contains examples of cases involving South Asian women who have killed violent partners, where evidence of their 'defiant' behaviour was used to discredit their account of abuse. In one case, which was sent to (and rejected by) the CCRC, the fact that the woman had challenged her partner on occasion was used as evidence that she was not affected by the cultural

expectations of her community to the extent that she had reported, suggesting that South Asian women are either completely subservient or they are somehow 'free' of their culture completely.⁸²

Another common stereotype of women who have experienced domestic violence is that a 'true victim' will show a degree of emotion when recalling the abuse she has experienced.⁸³ As outlined above, women who have experienced trauma may have a range of responses, including disassociation. This can lead to women coming across as 'flat' or 'cold' when giving evidence, which is then interpreted accordingly by the jury, as one lawyer described:

'She did not come across well in the witness box... she did not show a lot of emotion. [She] came across as a bit cold.'

(Lawyer interview 8)



Another lawyer explained how their client was portrayed as equally violent, based on some jokes she had made in passing:

'But the judge said: "I find you gave as good as you got." Because one foolish witness came to court and said two things. She made a joke that I could kill him if I wanted to... and the other thing the witness said was that in arguments, verbal arguments, they gave as good as they got. Well, X was mouthy. The problem is, again, people still haven't got to the stage when we can dispense with those old stereotypes, that if a woman is verbally quite mouthy or confident then she must be therefore not the rape victim, not the domestic abuse victim, not the shrinking violet when it comes to him being violent to her. She was, unquestionably the victim of violence.'

(Lawyer interview 1)

This stereotype of how someone who has experienced domestic or sexual violence should look or behave was a feature in two of the trials that were observed by the research team. In one case,⁸⁴ the defendant had been part of a WhatsApp group with a number of other women in which they referred to themselves as 'cunts'. In one message exchange, the women discussed 'winding up' their partners. One woman stated that she had tied up her partner in a chair, to which the defendant replied 'to kill him or have sex?'. This evidence was presented to the jury by the prosecution to demonstrate that these are not the messages a coerced woman would send. This was despite the fact that there was substantial evidence that the deceased had been violent to previous partners, and he had been physically and psychologically abusive to the defendant for years, including sexually abusing her, forcing her into prostitution, strangling her and threatening her with weapons.

In another trial observed by the research team⁸⁵ the woman, who was tall and Black, had killed her ex-partner. The prosecution referred to him as a 'small, slight man' on a number of occasions throughout the proceedings. This was despite overwhelming evidence of his violent behaviour towards her, including sexual, physical and emotional abuse, much of which was accepted as fact by the prosecution.

Substance use

It is well known that use of legal and illegal substances is a common coping strategy for women experiencing abuse or other forms of trauma.⁸⁶ In 19 of the 23 domestic homicide review reports reviewed, substance use issues were reported to be a factor in the relationship. Some of the women interviewed as part of this research had battled with problematic substance use, and this had been a factor in their trial. One woman said:

'They [police and prosecution] wouldn't accept it [account of abuse]. A lot of it was because of the previous history of my alcohol consumption... I lost a child to cancer in 2010, I lost my little girl... I kind of started to numb myself with alcohol. It wasn't an everyday thing. But I did sort of develop a reliance on it because it got rid of any pain I had, if that makes sense. Obviously the prosecution, this is what they have used on us.'

(Interview 18)

Some women described still being affected by substances, including medication prescribed by prison health services, up to and during the trial process, which severely affected their ability to engage with the trial – with likely consequences for their defence:

'I don't know. Talking about the start, I didn't know what was going on for most of it, I just switched off really. I weren't, like the first two weeks we was like, listening, and do you know what I mean, and then in the end I was losing the will to live. I didn't understand it. I was taking drugs... no support was ever offered, no one ever said, "Are you taking drugs? Do you need any help?"'

(Interview 3)

'At the time, I was on, they had put me on some medication called Trazodon, and I had asked the doctor on numerous occasions: "Please take me off it, I can't function on it." I couldn't function... I couldn't function on it. I went on my trial when I was on that medication and I could not defend myself, I was like a zombie.' (Interview 4)

'I didn't get any other support when I was in court. I wasn't even in the courtroom for the first few days or maybe a week. I just slept in the cells. I was on meds throughout the trial, Valium.'

(Interview 9)

In addition to affecting women's engagement with the trial process, intoxication at the time of the offence poses a number of difficulties for building a strong defence. Intoxication can represent evidence of abuse: drinking or taking drugs to blot out memories is a well-recognised coping mechanism for many with post-traumatic stress disorder, which may have been triggered by the abuse.⁸⁷ However, it is often portrayed at trial as evidence to undermine the character of the defendant. In particular, if intoxication has caused previous disinhibited behaviour, including verbal outbursts and lashing out at the deceased, this can be used as evidence that she is violent or unstable, as outlined above.

Intoxication is a further complicating factor when using partial defences to murder because the jury is asked to separate the disinhibiting effects of the alcohol from the underlying psychological causes of a loss of self-control. Thus, if a woman who is intoxicated loses her self-control in response to the conduct of the deceased, the jury must consider whether she would have lost control had she have been sober, which is an almost impossible task. Likewise, if a woman who is diagnosed with a serious mental health condition but was very drunk at the time of the offence, the jury must consider whether her responsibility was substantially diminished as a consequence of her mental health and separate the effect the alcohol may have had on additionally disinhibiting her.⁸⁸ Lawyers who were interviewed as part of this research highlighted this as a key challenge in many cases.

5.

Expert evidence

There are three areas in which expert evidence is relevant to this research: the use of psychiatrists and psychologists; the limitations of an over-reliance on medical experts; and the absence of expert evidence on other topics, such as domestic abuse.

Use of psychiatrists and psychologists
Lawyers told the research team that using experts was key to building a good defence for women in these cases:

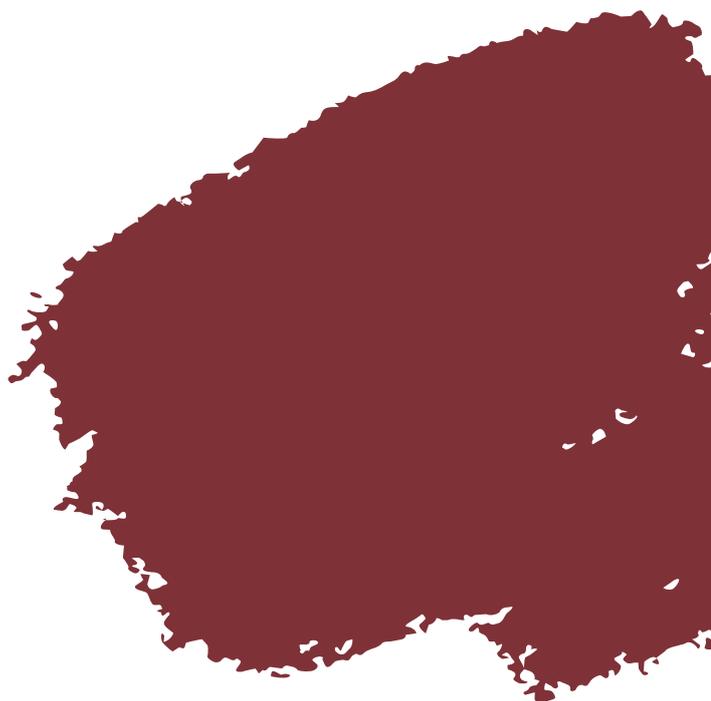
'... you've got to get psychiatrists involved and you've got to get good ones because you'll get some psychiatrists who'll come away with nothing at all. We got a fantastic psychiatrist involved so, yes, crucial. Part of your training ought to be even if you, as lawyers, don't detect anything particularly wrong with your client, have them assessed and try and use psychiatrists who have credentials that are strong in terms of domestic violence cases.'

(Lawyer interview 1)

However, equally important is the need for the right kind of expert, one who understands domestic abuse and trauma. It is also important for lawyers to provide clear instructions identifying the issues that should be explored: about the impact of past trauma and of the dynamics of the relationship. In cases where the expert evidence is poor, it can harm a woman's defence, or even prevent a particular defence. As one lawyer explained:

'The psychiatrist in this case was awful, he should have been struck off, the extent of his assessment was: "I asked her if she was depressed, and she said no". On that basis, he concluded she didn't have any mental health issues.'

(Lawyer interview 3)



Some women described feeling hurried, their interviews being brief and often conducted by men, or by people with little knowledge or understanding of men's violence against women or trauma. One woman explained:

'[After having a short assessment with a male medic] I said I would prefer a woman not a man. They had just left me alone in the little healthcare room with this man. They were like, okay, they were going to look into it, but then it was during my trial a lady came. And I was downstairs in court and I think it was for about 20 minutes. And she was asking questions to do a quick psychiatrist's report. So she did like a short one.'

(Interview 5)

In contrast, one woman spoke highly of her experience, and this seemed to stem from a positive relationship with her lawyer, who was committed to using experts with relevant experience in the field:

'I liked my solicitor X, she was lovely, she asked me lots about all of my relationships. She said she was gonna get an independent psychiatrist report... he interviewed me twice I think for four to five hours when I was in hospital... The defence psychiatrist who had a 46-page report argued that I had battered wives syndrome and that I should be offered a partial defence on those grounds.'

(Interview 9)

In the CCRC file review, the use or non-use of experts was a key reason why some women felt that there had been a miscarriage of justice in their case. Expert evidence was relevant in nine of the 17 files reviewed; in six of these cases, no experts were instructed at all in the original trial.

In one of these cases,⁸⁹ the woman had told one of the psychiatrists instructed to provide expert evidence that the deceased had taken pornographic films of her and shared them with his friends, and that he had urinated on her. However, the psychiatrist concluded this was 'not a case of battered women's syndrome'.

One lawyer also explained the challenge of instructing an appropriate expert who would not be considered biased by either side:

'You also need to be really careful about choosing expert witnesses, a lot of the psychiatrists or psychologists used are trying too hard for their team. The Crown will not use psychiatrists who agree with the defence too much, which tells you everything. It has become a bit of a racket, they are employed to say the right thing... I make sure I speak with my experts in advance, in person if possible, or over the phone. I need to know they are going to come across as balanced and not one-sided.'

(Lawyer interview 7)

This was also reflected in one woman's experience of being assessed by an expert for the prosecution:

'The psychologist against me [prosecution] said: "I do not want to hear about the abuse." That was her first words to me... I told my barrister and she did a complaint straight away. But after that, I couldn't really talk to her about [the abuse].'

(Interview 18)

Over-reliance on medical experts
Although instructing the right expert is necessary, there are limits to a process that places such reliance on medical experts. Firstly, there is the danger that the trial will evolve into ‘a beauty contest’ between the experts at the expense of considering the plight of the woman at the centre of events. For example, in one case observed by the research team,⁹⁰ psychiatric evidence was obtained by the prosecution and psychological evidence was cited by the defence. The evidence of each expert was disputed by the defence and prosecution respectively. The prosecution argued that the evidence from the psychologist, who had extensive experience of working with survivors of VAWG, was biased and of less weight because she was not a psychiatrist. This hierarchy of expertise appears to relate to medical qualifications (with psychiatrists often perceived as the most qualified by judges), with little regard to individual specialism, such as an expertise in violence against women or trauma, which is arguably necessary in these cases.⁹¹

Secondly, there is often a diversion of views between experts, which can be confusing for juries, as one lawyer highlighted:

‘It can be obviously really confusing, so in X’s first trial where she was convicted of murder there were a number of experts. I think there were about four experts in total, two psychiatrists, two psychologists for each side and just about every expert was saying something completely different.’

(Discussion with lawyers, lawyer 1)

Thirdly, the purpose of a psychiatric assessment is to consider whether there is a medical diagnosis that amounts to a mental illness or disorder. Being diagnosed with such a condition can be stigmatising and many women are resistant to the idea of being assessed by a psychiatrist. A mental health diagnosis may also have the effect of pathologising these women, when, in fact, the effects of domestic abuse are likely to have caused or contributed to the psychological condition. This, in turn, may explain why a woman responded in the way she did to the threat of further violence. Where a psychiatrist diagnoses a psychiatric condition, such as a personality disorder or an affective disorder, the focus of the trial will be on the fact that a woman has killed

her abuser because she is mentally disordered, rather than providing an understanding of her actions as logical in the context of her entrapment and subjugation.

The partial defence of diminished responsibility requires a medical diagnosis, hence the use of psychiatrists. However, consideration should also be given to using other experts who can explain domestic abuse, coercive control, the impact of sexual violence and cultural issues. Such evidence is capable of providing an 'interpretative lens' or structural narrative.⁹²

Such expert evidence can help to explain key factors that may be relevant to the case, including: why leaving an abusive relationship or seeking help may lead to further abuse or even death;⁹³ why failed attempts at seeking help may increase the risks faced by a woman; why there may be few independent witnesses available to corroborate a woman's account of her abuse; why allegations may have previously been withdrawn; and why it may take time for a woman to disclose what has happened. Expert evidence is also important to assist the jury to understand the reasonableness of a woman's perceptions of the danger she is confronted with and her belief that she had no alternative means to protect her life. It can also function to assist in normalising her behaviour and demeanour.⁹⁴

Absence of expert evidence on other topics such as domestic abuse
One lawyer told the research team that evidence from experts in violence against women can be used to augment medical evidence; they should not be considered either/or:

'It's the interplay between the domestic abuse and the particular psychiatric condition which is important. So you need both of those things. No expert, no self-respecting expert can really give evidence on something they don't know about. So any self-respecting expert will say "I'm not an expert on say coercive control. I'm not an expert on domestic abuse. I understand what it is, but I'm here to give evidence at this person's state of mind." So you need evidence from both experts, so they can look at the overall picture.'

(Discussion with lawyers 1, lawyer 1)

Expert evidence is allowed on any issue which is outside the experience of the jury,⁹⁵ yet there is reluctance to admit such evidence and it is rare in these sorts of cases. In Sally Challen's appeal, expert evidence on the relatively new concept of coercive control was provided and, importantly, helped inform the psychiatric understanding of her conduct.⁹⁶ This research, however, found that lawyers representing women often do not consider it as an option and are sceptical that a judge would accept it:

'And even I would, hands up and say it hadn't occurred to me to instruct that sort of expert [an expert in violence against women and girls]. I wasn't sure had I instructed such an expert that a judge would allow that evidence in.' (Lawyer interview 1)

One woman said that her lawyer had tried to get expert evidence admitted from a VAWG service that specialised in working with women from Black and minority ethnic (BME) backgrounds, and this had been unsuccessful as the judge decided culture was not relevant to the case:

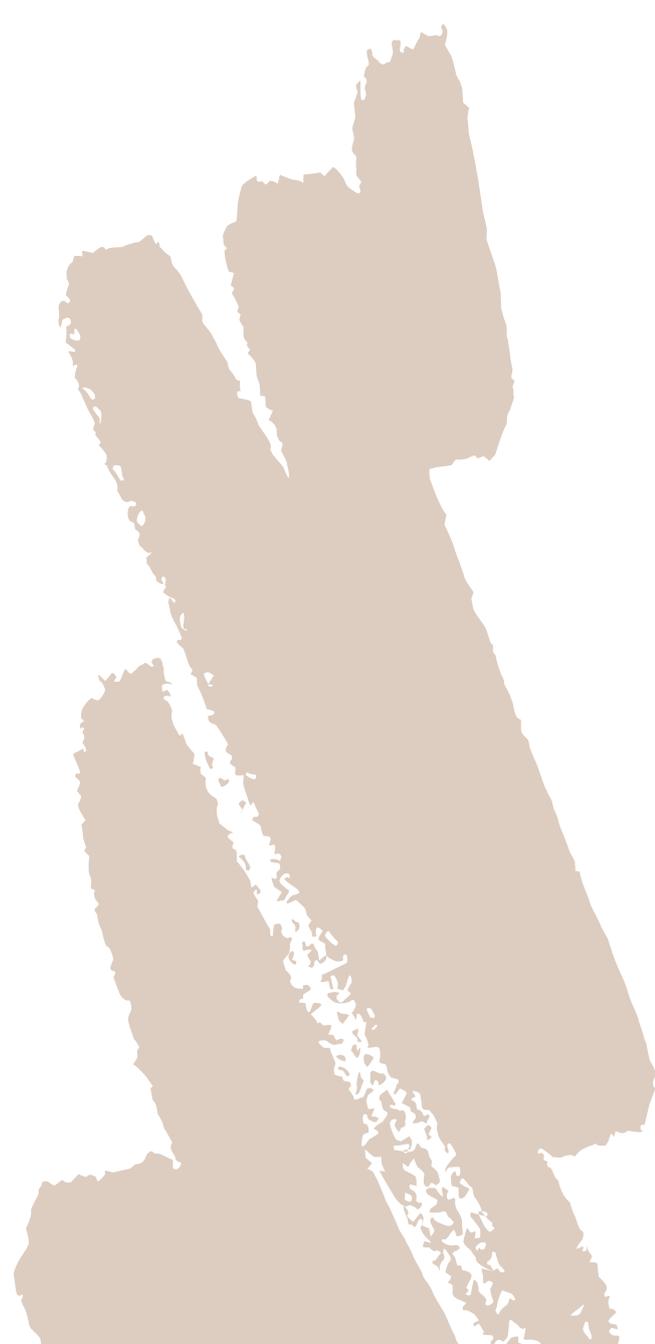
'The judge didn't accept their report [from a specialist BME women's organisation]. He said it had nothing to do with culture... basically they are trying to say that I was a westernised woman because I wore trousers, a top. I didn't dress not always in traditional clothing. I went to work. So this is what they classed as me being a Westernised woman... I think if it had, they would have understood like I said about, it doesn't matter how I'm dressed, I'm still an Asian woman and we still have to abide by the rules and restrictions of our society. Doesn't matter what face we put on.'

(Interview 19)

A reluctance to admit expert evidence on issues other than psychiatric ones was a feature in the CCRC cases examined by the research team⁹⁷. In one case,⁹⁸ the woman's lawyers had sought permission to cite expert evidence on cultural issues and VAWG, but this had been refused by the judge. A subsequent application to the Court of Appeal was also refused, on the basis that the jury had heard evidence from witnesses (family members) that provided information about the woman's background. This decision failed to take into account the fact that expert evidence is independent and given by a witness whose primary duty is to assist the court.

Although it is commonly thought that domestic abuse is well within the knowledge of juries, a detailed understanding of coercive control – how men perpetrate abuse and how women experience abuse – is not. Domestic violence tends to be understood as something resulting in physical injury; where there is an absence of evidence of physical violence, conclusions may be drawn that there was no violence or the violence was not serious. However, other forms of violence and control may remain hidden, including sexual violence (for example, routine rape) and psychological violence. Even non-fatal strangulation, a common form of coercion and control used by men in domestic abuse, may not result in obvious signs of physical injury, whilst potentially causing enduring psychological – and sometimes neurological – harm.⁹⁹

Expert evidence can potentially explain how different forms of coercive and controlling behaviour combine to create an environment of entrapment, which can leave women powerless to leave an abusive relationship. There are many myths and stereotypes associated with domestic violence which can affect a jury's perceptions, and although judges have an important role to play in assisting a jury by providing instructions, expert witnesses can be extremely valuable in these cases, as evidenced in other research.¹⁰⁰



6.

After conviction

Sentencing

In roughly half of the 92 cases included in this research, women were convicted of murder (n=40) and half were convicted of manslaughter (n=42). Very few women were acquitted (n=6).¹⁰¹ If someone is convicted of murder, the trial judge is required to impose the mandatory life sentence and set a minimum term of imprisonment that must be served before there is eligibility for parole.¹⁰² The length of this depends on the circumstances: both aggravating and mitigating factors. The Sentencing Council has published sentencing guidelines for offences of manslaughter by way of loss of control and diminished responsibility¹⁰³ and judges must have regard to these.

A review of sentencing law is outside the scope of this research, but a number of concerns arise in the type of cases with which it is concerned. If a woman is convicted of manslaughter, the judge has complete discretion over her sentence, which could be anything from life imprisonment to a non-custodial sentence. Over the 30 years that Justice for Women has been campaigning on this issue and supporting women who have been convicted, the average length of minimum tariffs for murder and fixed terms for manslaughter has increased. One lawyer, who has been involved in Justice for Women from its inception, commented:

'When we started Justice for Women back in the early '90s we saw women who were able to successfully use manslaughter by reason of provocation or diminished [responsibility] and there was an understanding of the mitigating circumstances around the domestic abuse. The courts would sentence occasionally a non-custodial sentence or often two or three years at most. Whereas now, we're seeing sentences of 14 to 18 years for manslaughter, even in circumstances where the domestic abuse is recognised.'

(Discussion with lawyers 1, lawyer 2)

'Tariffs have gone up massively and I would say that it's now the bog standard, it's quite unusual to get under 15 years, really.'

(Discussion with lawyers 2, lawyer 2)

This is in line with an upward trend in the use of custody and the length of prison sentences for homicide across the board.¹⁰⁴ The different gendered experiences of women and men do not appear to have been taken into account when developing sentencing policy, and it is likely that the impact of these policies on women who kill abusive men has never been fully considered.

For example, the use of weapons is an aggravating factor in determining sentences,¹⁰⁵ yet women, who are usually physically smaller than their male partners, are more likely to use a weapon rather than their bare hands when responding to an abusive partner. In 79% (n=73) of the cases included in this research, women had used a weapon to kill their partner. In contrast, the second most common form of femicide is strangulation, a method of killing almost entirely absent when women kill their male partners:¹⁰⁶

'But then you'll get, for example, a much higher starting point if a firearm is used or a much higher starting point if a knife is taken to the scene. So if a woman kills her partner, abusive partner with whom she's not living because she carries a knife in her handbag and she sees him in the street, or he attacks her in the street and she's taken a knife to the scene, then there's a starting point of 25 years.'

(Discussion with lawyers 1, lawyer 1)

Appeal

One motivation for this research, and for the work of Justice for Women, is the belief that many women who have killed their abusers are wrongly convicted of murder. And once convicted, the opportunities for appeal are very limited.¹⁰⁷ There is no automatic right of appeal and women can find themselves wrongly convicted of murder with no legal remedy. Of the 20 women interviewed as part of this research, five had sought advice about their right to appeal and had been advised that there were no grounds. The actual number is likely to be higher, as three women were seeking advice at the time of the interview in relation to historic convictions (2012 and before).¹⁰⁸ Grounds for appeal need to be lodged within 28 days of conviction, although it is possible to extend the time limit if there is a reasonable explanation for delay. Most of the successful appeals supported by Justice for Women were brought 'out of time', sometimes by years. This was usually because the women concerned sought advice after being advised by their lawyers at trial that there were no grounds to appeal.

However, it can be a difficult process to navigate. A conviction can only be appealed if there has been a misdirection by the judge on a point of law or if fresh evidence emerges following a conviction, which may cast doubt on whether the conviction is 'safe'.¹⁰⁹ It is difficult to argue that a conviction is unsafe on the grounds that a woman's lawyer provided her with poor representation, failed to elicit an account of abuse, took the tactical decision to downplay violence from the deceased, or failed her in some other way. The conduct of the defence team would have to be glaringly negligent for the Court of Appeal to permit an appeal on this basis. It is also difficult to argue that a woman failed to mention the abuse she was subjected to but now wishes to do so. The response would normally be that she could not have 'two bites of the same cherry', even where there is a good psychological or cultural explanation for why she did not previously speak of her abuse. Yet, as this research demonstrates, all these factors may contribute to a woman being convicted of murder. As one lawyer noted:

'Finding grounds for appeal is very, very difficult. It has to be fresh evidence or incorrect legal direction. If you get a very weak defence team, or a prejudiced jury, you may be stuffed.'

(Lawyer interview 6)

If a woman has been refused permission to appeal by a judge, she can renew her application orally before three judges, but no legal aid is available. If that application for permission is refused or she has an appeal which is dismissed, the last remaining route to justice is to apply to the CCRC.¹¹⁰ The CCRC has limited statutory powers and can only refer cases to the Court of Appeal if there is fresh evidence that raises a real possibility of a conviction being overturned.¹¹¹ In 2018/19, the Court of Appeal (criminal division) allowed 6% of applications for appeals against a conviction,¹¹² and, since its establishment in 1997, the CCRC has referred less than 3% of cases received.¹¹³ So once women are convicted, the chances of a successful appeal are extremely slim. And even if a woman is eventually successful in an appeal (most successful appeals, particularly those relying on fresh evidence, usually result in a retrial), the process can take many years, which can mean a long period of imprisonment.

Parole

If a woman has been sentenced to life imprisonment, she must serve the minimum tariff imposed by the judge, and can only be released when the Parole Board makes a decision to do so. A life sentence prisoner remains on licence for life and can be recalled to prison at any time if she breaches her licence conditions or commits another offence. Licence conditions are proposed and supervised by the Probation Service. When determining whether an offender can be released, the Parole Board's primary consideration is the risk she poses to the general public. It must also consider the extent to which she takes full responsibility for her offence. This can be problematic for a woman who did not use self-defence or provocation at her trial, but maintains that her culpability for the murder was reduced because of the circumstances of an abusive relationship. One lawyer, with significant experience of representing women at parole boards, commented:

'One of the problems is that women who have killed in the context of abuse... their partial defences haven't worked or their appeals haven't worked and so they are convicted of murder. It's as if that negates the abuse that they've mentioned... it tends to be forgotten because the focus is always on the woman is a perpetrator of violence, and they are not allowed to then focus on the fact that they are also a victim of abuse and if they do they'll be accused of not taking responsibility as a woman who has perpetrated violence. I think that is a real problem. It's a problem because women don't get the help that they need, so they are not getting specialised help with psychologists who understand abuse and understand what they really need, which is to make sure they don't get into another violent relationship, because that's the only risk.'

(Discussion with lawyers 2, lawyer 1)

How risk is determined was seen to be a significant barrier for women as risk assessments, as the broader parole process is designed to cater for men's offending behaviour:

'What are the fundamental things I think that disadvantage women... the risk assessments... they have obviously been designed originally with men in mind... I've been before parole boards and they've often said things like "this is my first case with a woman".'

(Discussion with lawyers 2, lawyer 2)

As a consequence, women are getting 'stuck' in a prison system that lacks the resources to provide them with opportunities to rehabilitate, which acknowledge their experience of abuse alongside their offending behaviour. Lawyers reported that, in their experience, more and more women serving life sentences are being recalled to prison for minor violations, rather than repeated violent behaviour:

'When I started my role I was predominantly dealing with women lifers, really they just weren't recalled. I very, very rarely would see another woman come back. Very, very rarely. And I don't know at what stage it changed, but now... I've got quite a few clients that have now been recalled four or five times and they are getting recalled for maybe relapsing into drug use, not attending a probation appointment, not disclosing a developing relationship... I did a really thorough research [study] and I couldn't find one case where a woman who's been, this isn't just women who've been abused, this is just all women who've been convicted of murder, have gone out and murdered again. I couldn't find one case.'

(Discussion with lawyers 2, lawyer 1)

The two lawyers involved in this discussion reported that, in their experience of practising prison law for 20 years, community support for female offenders has been eroded to such an extent that women are often discharged from prison to situations where they have little or no access to appropriate support. One lawyer said:

'The service provision in the community for women is so, is just so limited, so you have people in prison because there isn't anywhere else to support them. It's just an absolutely appalling indictment of the society, isn't it?... There's a couple of clients I'm thinking of... that just have no support at all, family or otherwise. Maybe they have had to be moved away from the only community they know. Or they have been, they've been exploited, they've been in the care system and they just have got, they've got nothing... I think that's what the issues are with women who get recalled.'

(Discussion with lawyers 2, lawyer 1)

CONCLUSION AND RECOMMENDATIONS

Conclusion

In 2007, Baroness Corston published a report examining the treatment of women in the criminal justice system.¹¹⁴ It called for a radically different approach, one that recognised women's distinct experiences in a system dominated by men. Although many of the recommendations in The Corston Report were accepted by the Government at the time, the findings of this research demonstrate that women who get caught up in the criminal justice system are still not getting justice.

The findings of this research make clear that both the law itself and the way in which it is applied in England and Wales create barriers for women.

The following recommendations reflect this, calling for further law reform and changes to practice at every stage of the criminal justice process – as well as change beyond the criminal justice system – in order to overcome the triggers to women's lethal violence against their abusers and the many barriers that impede women getting justice in these cases.

Recommendations

1.

Systemic change to address triggers to women's lethal violence against their abuser

1.1

Beyond the criminal justice system, the Government must implement the reforms demanded by specialist organisations working to tackle violence against women and girls in response to the Domestic Abuse Bill, including: equal protection and support for migrant women; reforms to housing, health and social care, welfare, the family courts and support for children; and long-term funding solutions for specialist community services.¹¹⁵

1.2

This must include a programme of public education to improve understanding of violence against women and girls and its potential impact on survivors' lives, choices and behaviour. Specialist training should be made widely available for social care services, covering the complex dynamics and impact of domestic abuse and risk assessment, and drawing on innovative good practice models such as 'Safe and Together' in order to break down barriers to women's disclosure of abuse.¹¹⁶ This work must be culturally informed and inclusive of BME and migrant women and those with disabilities.

1.3

The police services and Crown Prosecution Service must work closely with specialist services tackling domestic abuse in order to achieve consistent, competent policing of domestic abuse offences, including coercive control. This must include: challenging any culture of disbelief and minimisation of domestic abuse;¹¹⁷ the appropriate use of protection orders; the effective gathering of evidence; and early identification of the primary aggressor where there are counter-allegations. Learning should be drawn from good practice models, such as London's specialist domestic abuse courts, and must be culturally informed and inclusive of BME and migrant women, and those with disabilities. Policing and prosecution units dealing with domestic abuse must be properly resourced and trained so that legal measures introduced to tackle domestic abuse are implemented effectively

1.4

Legislative reform is also needed. Non-fatal strangulation and asphyxiation should be made a specific offence to protect survivors.¹¹⁸

2.

When women kill: early stages of the criminal justice process

2.1

The Government should develop a comprehensive policy framework to support improved criminal justice responses to those who offend as a result of their experience of domestic abuse, informed by close joint working with women's specialist services in the community. This work

must include specific consideration of the additional challenges that can be faced by certain groups of women, including BME women, foreign national women and those with disabilities. Training and guidance materials should be commissioned from specialist women's and BME women's frontline services with expertise in gender-based violence. Learning should be drawn from models of good practice, such as London's domestic abuse courts, to develop specialist approaches with women defendants.¹¹⁹

2.2

The police response should be improved by:

a) Reviewing the role of forensic medical examiners in 'fitness for interview' tests, including the need for additional training.

b) Providing additional guidance for police first responders and custody sergeants on identifying when a woman suspect is, or may be, a victim of domestic abuse (including coercive control) and ensuring it is followed.

Learning may be drawn from equivalent guidance to police on human trafficking indicators.¹²⁰

c) Providing guidance on the circumstances in which an interview of a suspect who is or may be a victim of domestic abuse should be suspended so that a victim / witness can be conducted, as occurs in child sex exploitation cases.¹²¹

2.3

In order to ensure women's legal representatives have the necessary expertise:

a) The Solicitors Regulation Authority should amend the police station representatives' accreditation scheme to include modules on domestic abuse indicators and how to handle those at the station, to improve the provision of initial legal advice.¹²²

b) Mandatory training should be introduced for criminal defence solicitors and barristers, equivalent to existing training for those representing children and vulnerable witnesses, for the purposes of representing defendants and suspects who are victims of domestic abuse, including coercive control.

c) Legal aid rules should be changed to ensure that women can appoint a new solicitor who is able to show specialist knowledge of the context of domestic abuse. This could be done by reference to a panel of specialists.

2.4

In order to improve Crown Prosecution Service (CPS) practice:

a) Drawing on existing CPS legal guidance on domestic abuse, additional guidance should be provided on the links between women's offending, including women who use lethal violence, and their experience of domestic abuse. This should cover compliance with the UN Bangkok Rules¹²³ (which require women in the criminal justice system who have experienced violence to be identified, treated appropriately and receive support, and require their experience to be taken into account in sentencing decisions), CEDAW¹²⁴ and the Istanbul Convention. The guidance should indicate the circumstances in which it may be appropriate to charge with manslaughter rather than murder, or not pursue charges at all, and cover acceptance of pleas. The guidance should also support appropriate interpretation of the alleged behaviour of the suspect who is also a victim of abuse, to avoid 'victim-blaming' and any reliance on myths and stereotypes.

b) There should be a meaningful mechanism for seeking a review of a decision to prosecute for murder in circumstances where there is clear evidence of a history of domestic abuse suffered by the suspect. The CPS decision maker should be required to provide reasons where they reject representations not to charge or not to accept a plea to manslaughter.

c) An expert panel of prosecutors should be established for homicides by women who may have experienced abuse. Learning should be drawn from London's specialist domestic abuse courts.

2.5

Interpreters must be adequately trained and accredited to work on these cases. Female interpreters must be made available within a reasonable time frame, particularly for women from cultures where women do not mix with men outside the family.

3.

Court proceedings

3.1

Adequate legal aid must be made available throughout the criminal process, including on appeal, to reflect the time required for criminal defence lawyers to build trust with their clients and support disclosure of abuse, and for investigation of the background to the offence.

There should be fewer restrictions on the ability to transfer legal aid where a defendant loses trust in their solicitor due to lack of understanding of prior abuse. We support the recommendations made by Naima Sakande for a revision of the terms of the Standard Crime Contract 2017, and propose that those amendments should be extended to criminal legal aid services throughout proceedings in these cases.¹²⁵

3.2

In order to allow appropriate exploration of domestic abuse in the courtroom:

a) Defendants who have experienced domestic abuse should be provided with the same protection that exists for witnesses giving evidence as a complainant, in order to enable them to provide the best evidence. Such defendants should have access to a range of provisions to ensure a fair trial, such as practical support in the courtroom and special measures. Learning should be drawn from good practice models, such as London's specialist domestic abuse courts, which could provide a model for a specialist,

gender-informed and trauma-informed criminal justice process for female defendants.¹²⁶

b) The *Equal Treatment Bench Book* should be amended at paragraph 62 to include cases involving domestic abuse and violence, and awareness should be raised among advocates and the judiciary of how to make use of these provisions for vulnerable defendants who have been victims of abuse.

3.3

In order to ensure the judiciary has sufficient understanding of violence against women and girls and is aware of unhelpful myths and stereotypes:

a) An expert panel of judges should be established to preside over such cases.

b) The Judicial College should introduce training and guidance on the appropriate handling of such cases.

c) Chapter 6 of the *Equal Treatment Bench Book* should be amended to cover circumstances where a defendant is also a victim of domestic abuse, including coercive control.

d) Relevant sections of the *Equal Treatment Bench Book*, such as examples of coercive conduct, should be incorporated into the Judicial College Crown Court Compendium to ensure that such information is set out to juries. Guidance on matters such as reasons for not leaving dangerous partners, should be made mandatory to explain to juries.

4.

Additional challenges

4.1

In order to address memory issues, measures that exist for victims and witnesses should be mirrored for defendants who have experienced domestic abuse, making clear, for example, that although testimony may be confused, this does not mean it is not true.

4.2

Where there are counter-allegations of abuse (violence ‘on both sides’), lessons should be drawn from models of good practice, such as London’s specialist domestic abuse courts, in order to ensure a nuanced understanding of the dynamics of domestic abuse. Mandatory training for lawyers on domestic abuse must be gender-informed.

4.3

Guidance on myths and stereotypes surrounding domestic abuse should be introduced for all professionals involved in criminal proceedings to counter common misconceptions, such as the reasons why women do not leave an abusive partner.

5.

Expert evidence

5.1

The use of independent experts on violence against women and girls, race and gender, culture and religion should be encouraged and be more readily admitted as evidence by judges. Experts from the specialist women’s sector (including, where relevant, the specialist BMEwomen’s sector), with a track record of tackling violence against women and girls, should be used and recognised for their insights based on experience.

5.2

Psychiatrists and psychologists instructed in these cases should have some expertise in domestic violence and trauma. Where a defendant is under the age of 18 at the time of the offence, adolescent specialist evidence should also be required.

5.3

Judges should recognise the value of, and admit more readily, expert evidence on coercive control and other forms of violence against women, including expert evidence from those who can provide a cultural context, particularly around norms in different BME communities.

6.

After conviction

6.1 Sentencing

a) Tariff guidelines for murder should be reviewed in the light of the findings of this report.

b) There should be greater flexibility in sentencing to recognise not only dangerousness but also the absence of dangerousness. The Sentencing Council should review its guidelines in light of this research and Government ministers should consider whether changes are needed to the statutory sentencing framework.

c) Aggravating factors and increased minimum tariffs for the use of a weapon should be reviewed in light of these findings, recognising that women who have been suffered previous violence from the deceased are more likely to use a weapon to defend themselves and less likely to kill with their bare hands.

d) Consideration should be given to the impact of long sentences of imprisonment on the families of those sentenced, in particular young children.¹²⁷

6.2 Appeal process

a) The CCRC should undertake a fast-track review of all cases (including those where there has not been a previous appeal) where women have been convicted of murder in circumstances where there is some evidence of a history of domestic abuse. The review team must include people with expertise on the dynamics and impact of domestic abuse, and on how this plays out in different cultural contexts. Training should be provided to all CCRC caseworkers to assist them in carrying out such a review.

b) The length of time it takes for a case to get to appeal stage after grounds are submitted should be reduced.

c) Judges sitting in the criminal appeal court should be given mandatory training on the dynamics and impact of domestic violence. There should be greater willingness to admit fresh expert evidence on this.

d) We endorse the recommendations made by Naima Sakande in her recent research on the appeal process.¹²⁸

6.3 Parole

a) Training is needed for all participants in the parole process, including the Parole Board, probation officers and lawyers, on gender-based violence – including domestic violence and coercive and controlling behaviour.

b) There should be more gendered and culturally specific resources within prisons to help BME women with the parole process.

c) A review of the use of recall on licence is required. This should only be used where there is a risk of harm and the risk is no longer manageable in the community. Probation services should be accountable for unnecessary recall decisions.

d) More financial and resourcing support is needed for specialist, gender specific community services that can support women post-imprisonment.

e) Research should be undertaken on the extent of any further violent offending after life sentence women are released.

f) There should be a centralised database, providing information on all available options for supported and trauma-informed accommodation and community support, including BME-s culturally specific support, as alternative options to approved premises.

g) Women released on life sentence should be provided with an information pack or app, including all information on life licence and disclosure issues and a list of resources.

7.

Further recommendations

7.1

The Government should regularly publish data on both homicide perpetrators and victims, disaggregated by race and gender, including defences used, in order to inform understanding of intersectional discrimination in the criminal justice system.

7.2

Section 76 of the Criminal Justice and Immigration Act 2008 should be amended to allow survivors acting in self-defence against their abuser the same protection as householders defending themselves against an intruder.¹²⁹

7.3

The Government's VAWG and Domestic Abuse Strategies, and the Statutory Guidance Framework to accompany the Domestic Abuse Act 2021, should demonstrate and foster a clear understanding of the ways in which survivors of domestic abuse can be unjustly criminalised as a result of their experience of abuse.

These strategies must also establish an expectation on all agencies to improve their own practice so that unjust criminalisation is avoided, and so that survivors are instead supported and protected. This must be accompanied by sufficient resources for both statutory and non-statutory services to implement reforms.

7.4

Anyone appointed to chair a Domestic Homicide Review, be trained and educated to have a comprehensive trauma and gender informed understanding of domestic abuse, coercive control and culturally specific contexts where abuse may take place.



8.

Recommendations for further research

- a)** Qualitative research with other legal practitioners, notably absent from this study – the CPS, the judiciary and juries.
- b)** A comprehensive audit of cases, disaggregated by race and other demographics.
- c)** Detailed analysis of cases involving BME women, to understand the additional barriers these women face.
- d)** Comparison with men’s killing of women.
- e)** Research on what happens to women after they complete long sentences, to understand the risk (if any) of earlier release.

APPENDIX 1:

DETAILED METHODOLOGY

Researching women who kill their violent or abusive partners poses a number of challenges. First, as a relatively infrequent occurrence, it is generally not regarded as a priority in published official statistics, which, to date, have failed to disaggregate data sufficiently for a true picture to be established. It is also the case that official data may never be able to accurately record or reflect the number of cases where abuse has been present, because of the barriers women experience disclosing abuse. The problem of a small sample size also makes drawing statistically robust conclusions difficult, leaving research to focus on more qualitative methods of investigation.

Qualitative research in this area also presents challenges. Identifying and locating women who may fit the research criteria is difficult, as a number of these women may be in custody serving sentences for murder or manslaughter. Researchers must obtain permission to access them and ethical approval to do so. Women in the community may be equally difficult to access as their current whereabouts are unknown. Researching women who have experienced trauma also poses a number of ethical questions to which researchers must attend. In addition to the challenges of identifying women to participate in the research, conducting empirical research in law is difficult. Much of the focus of the research – court proceedings, the activity of lawyers, juries – are bound by matters of privacy.

Given these challenges, this research adopted a mixed methodological approach, employing both quantitative and qualitative methods. Such an approach makes it possible to establish a more comprehensive picture of the experiences of women who kill men who are abusive and the legal responses to these killings, permitting a range of different questions to be asked of the research data.

Data sources

Qualitative methods

Qualitative research is useful where sample sizes are small, where issues are new and complex and require exploration, and where the research endeavors to uncover detailed meanings and processes rather than testing hypotheses or attempting statistical generalisation¹³⁰. The study adopted a range of qualitative methods, including:

- an online e-survey of legal practitioners;
- semi-structured interviews and discussions with legal practitioners and other professionals;
- in-depth, loosely structured interviews with women;
- an examination of a selection of relevant Criminal Cases Review Commission cases and domestic homicide review reports;
- observations and desk-based research relating to six relevant trials; and
- a review of print media representations of women who have killed their violent or abusive male partners.

Primary qualitative data sources

Table 1: Overview of primary qualitative data sources

| | N |
|---|----------|
| In-depth, qualitative interviews with women | 20 |
| Semi-structured qualitative interviews with legal practitioners | 14 |
| Facilitated discussions with lawyers | 2 |
| E-survey of legal practitioners | 3 |
| Interviews with other practitioners | 3 |
| Observation of trials | 6 |

Primary qualitative data: in-depth qualitative interviews with women

Permission was sought from the National Offender Management Service to access women in prison. Once permission was granted, the Centre for Women's Justice (CWJ) wrote to individual prison governors to request access. In consultation with the two prison governors who granted consent, researchers underwent security clearance in order to access prisons and meet with women. An information sheet about the research was disseminated to women who had been identified by CWJ, or who had heard about the research and made contact with CWJ directly. In addition, prison staff and specialist support staff working in prisons identified women who they knew fit the criteria and might be interested in participating. In doing this, the research team worked closely with key contacts at each prison to ensure information about the research was disseminated to women appropriately and access to support was provided where needed.

As the research progressed, further participants were identified and accessed through snowball sampling, as participating lawyers (see below – interviews with legal practitioners) and women identified other lawyers and women for the research team to approach. Once a woman had indicated that she was willing to participate in the research, a more detailed explanation of the project was provided by the research team or key contact in each prison and individual consent to participate was obtained. Once consent was granted by the participant, the

research team worked with prison contacts to identify a suitable date and time for the interview, all of which took place in private interview rooms provided by the prison.

In order to ensure the ethical conduct of the research, the research team adopted a number of strategies to prevent harm to the participants. Firstly, it was agreed from the outset that the study would focus primarily on each woman's experience of the criminal justice system. Women were reminded from the start that we did not require them to discuss in any detail their experience of abuse or the violent event itself. Secondly, the research team worked with a key contact in each prison to establish clear referral routes should women require further support, either before or after the interview took place. Emotional or psychological support was provided by the prison, and legal advice and information was provided by CWJ. The feminist principle of reciprocity underpinned this aspect of the research, as women shared intimate details of their lives and researchers encouraged women to use this support if needed at each individual interview.

The research team encountered a number of challenges when identifying and supporting women to participate in the research. As outlined above, accessing women in prison required a lengthy application process, and permission to visit individual prisons was only granted in two cases. Furthermore, once granted, the researchers relied on staff within each prison to explain the research and recruit women to the study. These factors limited the number of women

accessible to the study. It was also difficult to locate and encourage participation from women in the community as some women simply wished to move on with their lives in private. In addition to the issues concerning practical access, women in these situations have experienced abuse, often from multiple perpetrators, and may also be traumatised by their experiences within the criminal justice system. While measures were put in place to mitigate against re-traumatisation, women who were potentially at risk either self-excluded or were screened out, further limiting the already small sample size. Three women initially agreed to participate, but discontinued their involvement before the interview took place. Problems gaining access and the snowball sampling strategy mean the study data may be unrepresentative, as it oversamples women who were suitable for interview and were accessible at the time. The study attempted to avoid this by utilising multiple sources, by widely advertising the research and by creating a case-matching database to establish how our interviewees represented the overall picture of cases.

Sample description

Table 2 provides a more detailed description of the sample of women who participated in the study. In summary:

- The women interviewed were convicted of these killings between 1997 and 2017.
- 18 of the 20 women had been convicted for killing a man who was abusive to them.¹³¹
- Three of the 20 women had been implicated in a killing carried out by their abusive partner/ex-partner.¹³²
- In 18 of these cases, women had been convicted of murder (three of these murder cases were joint enterprise) and two were convicted of manslaughter.

It is important to note that 18 of the 20 interviews took place in prison, which may help to explain why the sample contains a high number of women convicted of murder when compared to the longer list of relevant cases compiled by the research team (see the quantitative methods section below). Our sample does not include any women who were acquitted, but, given the relative rarity of acquittals in these cases, this is perhaps unsurprising.¹³³

Table 2: Description of sample of women participants

| Interview no. | Interview location | Original charge | Plea ¹³⁴ | Conviction/ year of conviction | Sentence | Appeal/ outcome |
|---------------|--------------------|---|---|--------------------------------|----------------------------|--|
| 1 | Prison | Murder | Not guilty | Murder (2005) | 20 years | Tried to appeal without legal assistance – refused |
| 2 | Prison | Murder (joint enterprise)/ perverting the course of justice | Not guilty | Murder (2006) | 24 years | Looked into making an appeal but unclear if formally lodged |
| 3 | Prison | Murder | Not guilty | Murder (2007) | 16 years | Yes, appealed sentence – refused |
| 4 | Prison | Murder (joint enterprise) | Not guilty | Murder (2008) | 17 years | Advised no grounds |
| 5 | Prison | Murder | Not guilty (loss of control) | Murder (2008) | 20 years | Seeking advice |
| 6 | Community | Murder | Not guilty (self-defence, provocation, diminished responsibility) | Manslaughter (1997) | Three years and six months | Yes – reduced sentence to two years |
| 7 | Community | Murder | Not guilty (diminished responsibility, loss of control) | Murder (2011) | 22 years | Reduced to 18 years in 2011/ quashed in 2019/ manslaughter plea accepted |
| 8 | Prison | Murder | Not guilty | Murder (2011) | 23 years | Advised no grounds |
| 9 | Prison | Murder | Not guilty | Murder (2012) | 17 years | Advised no grounds |
| 10 | Prison | Murder | Not guilty | Murder (2012) | 21 years | Would like to appeal |
| 11 | Prison | Murder | Not guilty | Murder (2013) | 14 years | Yes – refused |
| 12 | Prison | Murder | Not guilty | Murder (2012) | 11 years | No – does not want to |
| 13 | Prison | Murder | Not guilty | Murder (2016) | 17 years | Advised no grounds, seeking further advice |
| 14 | Prison | Murder | Not guilty (self-defence) | Murder (2016) | 12 years | Yes – refused |
| 15 | Prison | Murder | Not guilty (self-defence) | Murder (2016) | 17 years | Current – appealing conviction |
| 16 | Prison | Murder | Not guilty (loss of control) | Murder (2016) | 13.5 years | Unclear |

| | | | | | | |
|----|--------|---------------------------|--|---------------------|----------|--|
| 17 | Prison | Murder (joint enterprise) | Not guilty | Murder (2017) | 17 years | Yes – appealed sentence – refused |
| 18 | Prison | Murder | Not guilty (self-defence, diminished responsibility) | Manslaughter (2018) | 14 years | Current – appealing sentence |
| 19 | Prison | Murder | Not guilty | Murder (2018) | 17 years | Appealed – sentence and conviction – refused |
| 20 | Prison | Murder | Not guilty | Murder (2012) | 13 years | Advised no grounds |

Primary qualitative data: e-surveys and semi-structured interviews with legal practitioners

Semi-structured interviews were conducted with a self-selecting sample of 14 legal practitioners (five solicitors and 9 QCs) with direct experience of, and interest in, such cases. The interview topic guide focused on three main areas:

- an overview of relevant cases and a detailed case investigation;
- an examination of how legal responses could be improved; and
- a discussion about training needs.

Although a semi-structured interview guide was created, researchers encouraged interviewees to share insights and experience outside of this, or to focus on one aspect – for example, a particular case they had worked on that they were able to recount in detail. Informed consent was obtained from all participants prior to the interviews taking place.

In addition to the interviews with 14 legal practitioners, two facilitated discussions with lawyers took place – two lawyers and one researcher were present at each. These discussions took place after the interviews, and were designed to capture further data on key issues that were of particular importance to the research. Lawyers with expertise in the issues were invited to take part. One discussion focused on sentencing and parole, and the other discussion focused on the role of prosecutors and the use of expert witnesses.

Effort was made early on in the study to open the research to a wide range of legal practitioners, and initially a 16-question e-survey was disseminated to all large chambers and legal firms that practice criminal law, and the research was promoted in the *New Law Journal*. Despite wide promotion, the e-survey generated only three responses. Low response rates to this type of method are not uncommon and, in this instance, may be the product of a number of factors, including the small number of lawyers with direct experience of these cases and

the pressure lawyers may be under with their workloads and the system of billable hours. In response to this challenge, the research team focused on identifying and approaching lawyers known to have acted for women in these cases. The outcome was a smaller, purposive sample that yielded more detailed information. While the data from this sample is unlikely to reflect many women's experiences of legal representation and, inevitably, the lawyers who did participate had a knowledge and interest in the research area, it has been triangulated with women's reports of their experiences gathered during in-depth qualitative interviews.

Primary qualitative data: semi-structured interviews with other practitioners

In addition to interviews with lawyers, the research team interviewed a small number of practitioners with relevant expertise. An academic with significant experience of researching the criminal justice response to women who kill men who are abusive to them was interviewed, as well as two journalists with experience of observing criminal trials and reporting on relevant cases. Informed consent was obtained from interviewees in all cases.

The research team also tried to interview judges and members of the Crown Prosecution Service (CPS), and to conduct a review of relevant prosecution files. However, after some initial engagement, the CPS did not respond to requests for access, and

getting access to judges proved difficult and not possible within the timeframe of the project.

Primary qualitative data: trial observations and case monitoring

While seminal studies in this area have been based around the close analysis of trials, this study did not have the resources required to access transcripts or wait for them to be prepared.¹³⁵ Furthermore, it was not the study's intention to conduct a detailed critical evaluation of individual cases, but rather to explore a range of cases and look for common themes. As an alternative, the study undertook structured observations of six trials that took place during the time period of the research. In all cases, the defendant alleged the deceased had been abusive to her prior to the killing. The facts and circumstances of each case varied considerably, however, and by undertaking structured trial observations researchers were able to witness key elements of proceedings that have been identified as significant in the wider literature and in our own data – for example: how women themselves give evidence; how the defence and prosecution present women's experiences of violence; and how these experiences were interpreted in the courtroom. Researchers used desk-based research methods to collate further information on each case observed, gathering documents, such as case judgments and media reports, where available. In one case, a researcher was able to meet with the woman involved.

Secondary qualitative data

Table 3: Overview of secondary qualitative data sources

| | N |
|--|----------|
| Analysis of domestic homicide review reports | 23 |
| Analysis of Criminal Cases Review Commission files | 17 |
| Analysis of media reports | 119 |

Secondary qualitative data: domestic homicide reviews

Since 13 April 2011 there has been a statutory requirement for local authorities to conduct a domestic homicide review (DHR) following each domestic homicide that meets the criteria. A DHR is 'a multi-agency review of the circumstances in which the death of a person aged 16 or over has, or appears to have, resulted from violence, abuse or neglect by a person to whom they were related or which whom they were, or had been, in an intimate personal relationship, or a member of the same household as themselves.'¹³⁶ It is important to note that not all DHR cases appear in the Homicide Index, as there are wider criteria for inclusion. For example, a DHR may be conducted on an apparent suicide, when it appears the suicide was caused by abuse.

The purpose of a DHR is to learn more about the nature of domestic homicide and the context in which it occurs, in order to inform future policy development and operational practice. DHRs contain recommendations aimed at improving local, regional or national agency responses to victims of domestic violence and other forms of abuse. The Home Office uses data gathered in DHRs to develop national policy.

The Centre for Women's Justice (CWJ) approached the Home Office to identify every case since 2011 in which a female perpetrator had killed a male victim. A list of 37 cases was provided to CWJ, dating from December 2013 to April 2017. Some of these DHR reports were not publicly available – after they are submitted to the Home Office they are quality assured and some are returned to the relevant local authority to make improvements, so this may explain a delay in publication. Of the reports that were available, 23

were considered to fit the criteria for the research and five were excluded on the basis that the circumstances of the killing did not appear, from the facts available, relevant to the research.

Each of the 23 DHR cases was examined to establish:

- the nature and extent of abuse in the relationship (if any);
- the disclosure of abuse to key agencies;
- the response of criminal justice agencies, such as the police and the Crown Prosecution Service, to the abuse;
- any previous history of violence by both parties.

It is important to approach the data held in these files with caution. DHR reports are based on disclosure of abuse to key agencies, which, as this research and other studies show, is often absent in these cases. The quality and content of DHR reports varies considerably. In some instances, the report may include data gathered from the woman during an interview with the DHR chair, while in others the woman involved may have declined to be interviewed. Report authors and agencies also vary significantly in their understanding of, and response to, violence against women and girls, and so too will their approach to its analysis and reporting. DHRs, while extremely useful to this research, are limited in that they represent only a partial and contested narrative of domestic homicide; they must be both critically evaluated and triangulated with other sources of data where available.

Secondary qualitative data: case file review – Criminal Cases Review Commission

The Centre for Women's Justice (CWJ) approached the Criminal Cases Review Commission (CCRC) to request access to relevant CCRC files, and this request was approved by the CCRC research committee. The research team is grateful to the CCRC for its willingness to support this research and the time devoted to facilitating access to files.

A CCRC official conducted an initial review of CCRC case files and collated a shortlist of 24 relevant, and 21 potentially relevant, cases for the research.¹³⁷ The CCRC official was asked to look for cases where women had killed men who were known to them and where abuse may have been a feature of the relationship. They were encouraged to include, rather than exclude, cases where it was unclear if they fitted the criteria of the research to allow CWJ researchers to conduct further analysis.

A further examination of these case files was conducted by a CWJ researcher: an experienced criminal defence solicitor with knowledge and expertise of violence against women. The researcher selected files that involved cases where women had killed male partners/ex-partners with whom they were in an intimate relationship and where abuse was a feature of this relationship, or where there was another relationship where the deceased had some power/control over the woman – for example, in cases of prostitution or if he had been an older family member.

If there were no reports of abuse documented in the files, they were excluded. It is important to note that this does not mean abuse did not occur. However, as the research is focused on the criminal justice responses to women who have killed men who have been abusive to them, a detailed analysis of cases where abuse has been disclosed (even if this disclosure was after conviction) is more valuable.

This process reduced the list to 17 cases dating from 2001 to 2018. A review of the 17 files was conducted, drawing out relevant information from the following documentation they contained:

- the CCRC application form;
- documents outlining the CCRC's investigation and decision-making process for referring/not referring a case for appeal, such as a statement of reasons or a decision notice;
- other case documentation, such as a Court of Appeal judgment, transcripts from the original trial, skeleton arguments and grounds of appeal.

This information was captured in a standardised file review framework document, designed for this purpose, before being collated and analysed collectively to identify key themes.

Secondary qualitative data: media analysis

Analysis of media representations of women who kill was undertaken, focusing on reports in the British national press from 2010 to 2020. In total, 119 media reports were analysed. For further information about the methodology used to conduct the media analysis, see **Appendix 3**.

Quantitative methods

A number of quantitative methods were adopted to provide an overarching context for, and to compliment, the qualitative data. Official homicide statistics were reviewed to demonstrate the relatively rare occurrence of women's lethal violence to their partners or ex-partners. However, the official data is limited (see the section on homicide data in the main report), so the main purpose of gathering additional quantitative data was to try to overcome some of these limitations and offer a more nuanced understanding of the nature, extent and circumstances surrounding women's killing of abusive men – one similar to the approach adopted by the Femicide Census, which gathers more detailed information on men's killing of women than that provided by the official statistics.¹³⁸

Primary quantitative data: list of relevant cases

The research team collated a 'long list' of cases where women had killed men dating from 1993 to 2019 (n=143). The research team then focused further information collation on cases that took place between April 2008 and March 2018¹³⁹ (n=92) in order to build up a more complete case list to compare with other data sources. Cases were also screened out at this point where it was clear that they were not relevant to the research – for example, cases where women had killed men who were not known to them (from the information available). Key information was collated in relation to these cases, including the relationship between the woman and the deceased, the cause and date of death, the date and location of the trial, the outcome of the trial, and the sentence given. There were gaps in this data, particularly for older cases.

Key characteristics:

- In 84% of cases (n=78), women had killed men who were either their partner or ex-partner. In the remaining 16% of cases (n=14), relationship status included uncle, carer, flatmate, friend, client (in cases involving prostitution), and unknown.
- In 77% of these cases (n=71), there is evidence to suggest that women had experienced violence or abuse from the deceased.¹⁴⁰
- In 46% of cases (n=42), women were convicted of manslaughter, in 43% of cases (n=40), women were convicted of murder, and in 7% of cases (n=6), women were acquitted.¹⁴¹
- In 71% of cases (n=65), women had stabbed the deceased, in 9% of cases (n=8), women attacked the deceased with another type of weapon, in 5% of cases (n=5), women had physically attacked their partner with the assistance of another person, in 7% of cases (n=6), women had set fire to their partner or committed arson that resulted in their death.¹⁴²
- Of those women convicted of murder (n=40): 33% (n=13) were sentenced to 20 years or more; 35% (n=14) were sentenced to 15–19 years; 25% (n=10) were sentenced to 10–14 years; and 3% (n=1) were sentenced to five to nine years.¹⁴³
- Of those women convicted of manslaughter (n=42): 2% (n=1) were sentenced to 15–19 years; 7% (n=3) were sentenced to 10–14 years; 62% (n=26) were sentenced to five to nine years; and 24% (n=10) were sentenced to less than five years.¹⁴⁴

Secondary quantitative data: Freedom of Information requests

Quantitative data was requested from the Home Office, the Ministry of Justice (MOJ), the Crown Prosecution Service (CPS) and each of the 44 police services in England and Wales under the provisions of the Freedom of Information Act 2000.

Freedom of Information (FOI) requests to the Home Office and police services focused on the prevalence of cases, to help the research team build up a more accurate picture of the number of cases involving women who kill a partner/ex-partner each year. The FOI requests to the MOJ and the CPS focused on the number of women in prison, and also the use of defences that were most relevant to our research.

Data was successfully obtained from the Home Office, and all police forces responded to the request, although there were significant gaps in the data provided in some of the police responses. This made it difficult for the research team to use the FOI data from police services to build up an accurate picture, broken down by area, of the number of cases of women who kill a partner/ex-partner. However, the Home Office data provided these statistics for England and Wales. The MOJ and the CPS refused the FOI requests from the research team on the basis that to respond to the requests would exceed the costs permitted.

APPENDIX 2: THE INTERSECTION OF DOMESTIC ABUSE, RACE AND CULTURE IN CASES INVOLVING BLACK AND MINORITY ETHNIC WOMEN IN THE CRIMINAL JUSTICE SYSTEM

Pragna Patel, Southall Black Sisters

Pragna Patel is a founding member and director of Southall Black Sisters (SBS), an advocacy and campaigning centre. Established in 1979 to meet the needs of Black and minority ethnic women, the bulk of SBS' work is directed at assisting women and children to obtain effective protection and assert their fundamental human rights in the face of gender-based violence and related problems. Over the years, Pragna has been centrally involved in some of SBS' most important cases, and campaigns on domestic violence, immigration and religious fundamentalism. This has ranged from campaigning to free Kiranjit Ahluwalia and other women who killed their abusive husbands, to bringing about legal reforms to improve gender and race equality in the criminal, family and immigration justice systems. She has also written extensively on race, gender and religion.

This Appendix explores the interplay between abuse, gender, culture, religion and race. It highlights the specific problems that arise when Black and minority ethnic (BME) women attempt to navigate the criminal justice system, and the outcomes that follow. It is based

on the experiences of SBS in supporting BME women who have killed their abusive partners and an analysis of case studies of BME women that feature in the research data.¹⁴⁵

All women experience abuse in a cultural context; it plays a significant role in shaping both women's experience of, and their response to, domestic abuse and other forms of gender-based violence. Gender and culture lie at the very heart of the experiences of abuse faced by BME women and, in particular, South Asian women. Yet, all too often, the complex interplay between the two is ignored, deliberately downplayed or misrepresented by those in the criminal justice system. There is either little or no understanding of the gendered dimension of culture and religion, or it is reduced to stereotypical assumptions that ultimately work against the interests of women and justice.

What follows is an outline of some of the key issues and themes that have been observed in cases involving predominately South Asian women who have killed their abusive partners. This Appendix focuses more heavily on the

experiences of South Asian women, as this is the expertise of SBS and the research data covered these cases in more detail. However, it also highlights the experiences of BME women from other backgrounds.

Lack of knowledge and control over the legal process

Perhaps the most common theme that emerges in these cases is the extent to which women have control over the decision-making process during their criminal trials. Many South Asian women come from extremely traditional, insular and patriarchal communities that have afforded them limited opportunity to have meaningful interaction with the outside world or even to have a public presence. The growth of religious conservatism in these communities in recent years has exacerbated the restrictions placed on women. This creates specific problems for women when they find themselves thrust into the public domain and compelled to engage with the criminal justice system. The problem is three-fold.

Firstly, many women have, in fact, lived a life of 'purdah'; a life that is literally confined to the home and the domestic sphere, where they are expected to conform to traditional roles. Although this does not altogether preclude some interaction with the outside world, this is usually mediated through male members of the household or community elders, or restricted to attending schools, health appointments and other essential services. And even in these situations, women may be accompanied by partners or family members. This means that when they do find themselves having to

interact with the world outside in any significant way, they find the experience particularly distressing. Many lack confidence and are psychologically ill-equipped to engage with the police or other state authorities, especially if the officials are male and from the same background as themselves. In these circumstances, women find themselves heavily dependent on family support and advice. This also means that issues, such as abuse, may not be disclosed, or only partially disclosed.

'The family found a solicitor for me' is a common response when women are asked how they instructed their solicitor for their original trial. Many have been ill-served by their original legal representatives, who were not usually instructed from a position of informed choice. Lack of interaction with the outside world means that most women have little or no legal knowledge, and are poorly equipped to find appropriate advice and representation for themselves. The overwhelming majority of women have no prior convictions or engagement with the criminal justice system, which is why, for the most part, their families take charge of finding a legal representative when they are arrested. Some women are referred initially to duty solicitors facilitated by the police, but most go on to instruct solicitors chosen by their families. However, for the most part, women's families have little or no idea where to seek legal advice and few understand the need to find a specialist practitioner. All too often, families choose solicitors recommended by word of mouth, through contacts within their community or kinship groups. Families often seek help from legal practitioners who they

have come across in the normal course of their lives, which invariably means that they are general legal practitioners. Very rarely, at the outset, do women find their way to specialist and reputable legal firms with experience of defending women, and with an understanding of violence against them.

In these circumstances, women lack the personal resources or knowledge to make informed decisions or to override the view of their families when giving instructions to their legal representatives. At a time when they are often in a state of shock, confusion and distress, their need for family support is overwhelming (especially if young children are involved) and most find it impossible to go against their wishes. To do so would be to cut themselves off from all their networks of support and to jeopardise any opportunity they may have to be rehabilitated back into their families at a later stage.

The failure to disclose abuse

One of the most recurring aspects of BME women's accounts of their engagement with the criminal process is their failure to disclose abuse from the outset. Some make partial disclosures during the course of the criminal proceedings, but others completely deny that there have been problems in their marriage/relationships. Many only reveal the abuse they have experienced months, or even years, later. However, when they finally do make full and frank disclosures, usually after much counselling and support from specialist organisations, their initial silence or denial of abuse usually counts against them. The following are common themes that emerge:

There is often a complete failure on the part of judges and others to understand and appreciate the impact of the cultural and religious constraints on women, and their reasons for not disclosing abuse during their criminal trials. Those who come from strict cultural and religious backgrounds, where the pressure to remain silent is strong, start off at a huge disadvantage. Often the pressure not to talk publicly about their private lives can lead to denials about their involvement in the offence, projecting it onto others or putting the prosecution to proof (this means leaving it to the prosecution to make out its case based on the criminal standard of proof - beyond reasonable doubt - that the woman is the offender).

Many South Asian women are socialised to internalise abuse, and so find it extremely painful and shameful to talk of their experiences publicly. Any public disclosure carries family and community censure and backlash, which can have serious consequences for them and their children. Women are blamed for putting themselves at risk of abuse through their own behaviour - detracting focus from the perpetrators of the abuse and denying the harm caused by it.

In refusing an application for review against a murder conviction by a woman from a South Asian background, the Criminal Cases Review Commission (CCRC) relied on the trial judge's summing up of her history of violence:¹⁴⁶ 'The picture that has emerged in evidence is not one of a history of documented abuse, but only her word for it well after the charge.' The CCRC also referred to the trial judge quoting

the woman who said her marriage was 'happy' and that 'there had never been any violence or aggression' until she filed her defence statement. She made no reference to the sexual abuse until the trial.

Although the CCRC must apply a statutory test in its decisions, which restricts the cases that can be referred to the Court of Appeal,¹⁴⁷ what is little understood by the criminal justice agencies involved in this case is that the portrayal of their marriage as 'happy' by some women is often deliberate: their intention is to avoid the isolation, community scrutiny and lack of support they are likely to face during and after imprisonment. As described above, many women are completely emotionally and financially dependent on their families. Without strong family and community support, women stand to lose their children, homes and support networks, for which they are not prepared. This ostracism may not be limited to women themselves, but can extend to children, especially girls, and affect their future standing in their community. A particularly tragic example of the catastrophic impact of severing family ties is illustrated by the 1980s case of Iqbal Begum (see below), who killed her husband following years of abuse. She was convicted of murder, which was eventually overturned on appeal due to the lack of adequate interpretation at her trial. However, when she came out of prison, the community in which she had lived all her life refused to accept her, and she found it impossible to re-integrate. Unable to cope with the ostracism, she committed suicide a few years later.

In addition, many women do not disclose the extent of the abuse they have experienced, often because they themselves have not fully understood that what they have experienced is abuse. This is particularly problematic where the dynamic of the relationship is one of coercion and control. In South Asian communities, concepts of coercion and control in the marital context are not recognised as abuse, and matters of sex and sexuality are taboo. Women who openly talk about these subjects are frequently perceived as sexually transgressive, which carries considerable stigma and affects their community membership.

A related problem is that few women have contemporaneous documented evidence of the abuse they have experienced, mainly because they were unable to disclose their experiences to anyone, or anyone outside their immediate circle of family, relatives or friends. Even then, most only confide in circumstances where they know the information will not be shared widely in the community or kinship group, or acted upon. Some women resort to making limited disclosures to family and relatives purely to enlist help to save their marriage through the process of family mediation. Others have little or no opportunity to report the abuse, mainly because they are accompanied by their husbands or other family members when they leave the home, including on visits to their GP or hospital. Yet such highly circumscribed actions are often wrongly interpreted to mean that such women are not constrained by their cultural backgrounds.

The CCRC recently rejected an application from an Asian woman from a highly conservative background, who had been convicted of murdering her abusive husband, to have her case referred back to the Court of Appeal. It is the author's view that this rejection was based on a series of flawed understandings and misconceptions about her (ultimately futile) attempts to navigate abuse within the confines of her social, religious and cultural context. The CCRC report states:¹⁴⁸

Most notably, Ms X claims the culture of shame and dishonour prevented her from disclosing her marital difficulties and the abuse she suffered to others. It is this which she asserts is the main reason for not putting forward at trial the partial defences she now seeks to raise. However, on her own account, she disclosed both the abuse and marital difficulties to any number of other people prior to Mr Y's death, both within her family and outside it.

There is no attempt to understand that Ms X's disclosures were limited to appealing to her husband's family to help her end the abuse where

they would not have wanted to invite community attention; and discussion of the abuse with other women, not in her immediate kinship group, who were also sharing their stories in strictest confidence on the understanding that no one would disclose them.

When women do report abuse to outside agencies, such as a GP, this is sometimes dismissed as evidence, mainly because it has been recorded as 'family problems'. What is not explored is whether these are the exact words used by the women, or whether they have merely been recorded in this way. Often the phrase 'family problems' is code for abuse, but this is rarely interrogated by those who take the reports. Related to this is the failure of medical records to note the full extent of abuse or the impact of abuse on women's mental health. This is partly due to the fact that some women have a poor understanding of mental health problems, such as depression, and partly to their fear of the consequences of being labelled 'mad'. It is also notable that in various minority communities there is no precise language to describe depression or mental health problems, mainly because mental health remains taboo and carries considerable stigma. The consequence of this is that the vast majority of women do not report the impact of abuse on their mental health. Instead, many are likely to present with psychosomatic symptoms that are never closely examined.

Few people are therefore able to provide evidence in support of women's allegations of abuse, with the exception of some family members or friends. However, their evidence is not regarded

as 'independent' and so little or no weight is attached to their statements. This double-bind almost always works against women, who are told that their disclosure of abuse is 'self-serving' and that it is 'only their word', which cannot be relied on, as they did not disclose abuse to anyone independent of their family at the relevant time.

Cultural evidence

Many women from minority backgrounds rely on expert cultural evidence, since few people in the criminal justice system have a proper understanding of the complex interplay between gender-based violence and inequality, culture and religion, or the reasons why women may have stayed largely silent in the face of abuse. This lack of understanding is perhaps one of the most significant barriers faced by BME women today. Yet when expert evidence is presented, it is rejected, half-digested and – worse still – sweeping assumptions and distortions are made, which undermine women's accounts of abuse and, ultimately, their credibility. This problem plays out in the criminal justice system in the following ways.

Cultural evidence carries little or no weight, and is often dismissed outright. It is not uncommon to hear judges direct that there is no need for such evidence, since culture falls within the 'common sense' understanding of juries and does not need further explanation.

Secondly, it is assumed that if any explanation about a woman's cultural background is needed, it can be given by members of her family. For example, in 1990, at the original murder trial of Kiranjit Ahluwalia who killed her

husband after 10 years of abuse, her own trial lawyers refused to allow expert evidence to explain how her cultural background and the notions of 'honour' and 'shame' were relevant to understanding why she could not leave her abusive marriage. Despite attempts by Southall Black Sisters to present such evidence, her lawyers stated that whatever background information was needed would be provided by her family, who would be called to give evidence. In a more recent CCRC case, reviewed by the research team, a South Asian woman complained that her trial judge had refused to allow expert evidence on cultural issues. The trial judge said (and, subsequently, the Court of Appeal agreed) that the jury had already heard from witnesses 'from her background', including her father, mother, brother, first husband and friends, and therefore the evidence from that expert was irrelevant.

The problem with this approach is that family and community members cannot provide an objective analysis of their cultural and religious backgrounds, since many are socialised into the same value systems and structures, and are often (intentionally and unintentionally) complicit in the constraints that are placed on women. They cannot explain how women's experiences of abuse are shaped by the very traditions and customs that they uphold. A second problem is that very rarely do accounts from members of a family or community provide a gendered analysis of culture, or critically reflect on how power is allocated within marriage, family and community that impacts on men and women differently in respect of the perpetration and response to abuse.

They are highly unlikely to provide an insightful account of harmful practices or explain how women's lives are shaped by the changing cultural and religious customs and practices that keep women in subjugated and powerless positions within the family, and which normalise abuse.

Thirdly, although in many cases cultural evidence is critical to understand the context, it is often viewed by judges and others in the criminal justice system with considerable scepticism. What is presented is often turned on its head and used against women. There is a tendency to reduce dynamic and fluid cultural contexts to stereotypical understandings and assumptions, creating cultural standards by which women's actions are judged. For example, concepts such as shame and dishonour are used to create a paradigm of absolute female passivity, which is used to reject women's behaviours that do not completely conform to such cultural standards. If women have acted in ways that suggest an element of agency or found ways to survive within the constraints of their environments, they are deemed not to be under the influence of cultural and religious constraints. If they lead so-called 'westernised' or 'independent' lives, they are deemed to fall outside the cultural threshold that is created. For example, an Asian woman, who killed her abusive husband and was interviewed by the research team, said that a cultural report prepared by Southall Black Sisters had been rejected on the basis that it was not relevant since she dressed in a 'westernised' manner and did not look like someone who was negatively impacted by her

cultural background. She said that if the cultural report had been accepted

'... they would have understood like I said about, it doesn't matter how I'm dressed, I'm still an Asian woman and we still have to abide by the rules and restrictions of our society. Doesn't matter what face we put on.'

Similarly, in 1990, at the murder trial of Kiranjit Ahluwalia, when directing the jury on the 'relevant' characteristics' to take into account in determining whether she had been provoked, the trial judge referred to her as 'an Asian, but educated woman'. The assumption being that her education cancelled out the impact of the religious and cultural norms by which she lived and so presented no barrier to leaving her abusive marriage.

A further example of how cultural stereotypes are used against women is the 1990s case of Zoorah Shah, who came from a very conservative Pakistani background. She lived a shunned existence on the margins of her community in Bradford because of her status as a divorced woman and single parent. Her only means of survival was to live by her wits on the streets in a male-dominated, patriarchal world. She found herself compelled to enter an exploitative relationship with her landlord in return for shelter and

food for herself and her three young children. Living such a precarious life meant fending off other men, who also constantly harassed her for sex. Eventually, after years of sexual and financial abuse, she killed her landlord. At her original trial for murder, Zoora did not disclose the abuse, fearing the impact on her children's life prospects, including marriage. She was convicted on various counts, including murder and attempted murder. In 1998, Zoora appealed against her convictions on the basis of the abuse she had experienced, but it was rejected by the Court of Appeal. Ignoring the wealth of contemporaneous medical evidence, including psychiatric and cultural evidence that supported her account of destitution, abuse and depression, the Court of Appeal stated:¹⁴⁹

'This appellant is an unusual woman. Her way of life has been such that there might not have been much left of her honour to salvage and she was capable of striking out on her own when she thought it was advisable to do so, even if it might be thought to bring shame on her to expose her to the risk of retaliation.'

The judges used the concepts of 'shame and honour' not to aid their understanding of her specific circumstances, but to undermine her account of abuse, suggesting that a true victim would not have lived a sexually transgressive life without knowing and accepting the consequences. This highly discriminatory attitude to gender and culture becomes even more significant when juxtaposed against the very different conclusion reached by Lord Bingham, the then Lord Chief Justice, who reset Zoora Shah's sentence from the original 20 to 12 years. Rejecting the description of Zoora as a particularly 'callous' woman who engaged in 'premeditated murder for material gain', he said:¹⁵⁰

'... on the contrary, this was the conduct of a desperate woman threatened with the loss of her home and with destitution in what remained for her a foreign country.'

Sweeping and misconceived assumptions about cultural contexts and the creation of cultural standards and stereotypes that seek to delegitimise women's accounts of abuse continue to be made. In rejecting one woman's application for review for the purposes of appealing against her murder conviction, the CCRC notes:¹⁵¹

'The [cultural] report claims that in Ms X's culture Mr Y would have been her God on earth and that challenging his control and not being an obedient wife would be considered to violate 'honour'. However her new account demonstrates that she constantly challenged him. For example by complaining about his holiday to Turkey or defying him by being seen in the street without her niqab. On her own account, it appears that she ignored the cultural expectations when it suited her – standing up to Mr Y – but seeks to rely upon them to provide an explanation for the delay in disclosing the abuses she now claims he subjected her to.'

The reality is that women's attempts to negotiate abuse or find momentary autonomy within their lives do not cancel out the sheer force of cultural,

religious and social expectations with which they live on a daily basis and which ultimately prevent them from being able to end the abuse. What those in the criminal justice system often fail to grasp is that there is a difference between women acting within the constraints and having real power to make choices or take control over their lives without serious social consequences.

Other racial stereotypes

Within the criminal justice system, cultural and racial stereotypes that are used against South Asian women also abound for women who come from African and Caribbean backgrounds. There is often a failure to address the structural positions of African or Caribbean women in society and the social relations in their communities that also give rise to abuse and violence. The myth of African and Caribbean women fulfilling masculine roles in their communities is pervasive. Notions of such women as 'strong', 'aggressive' or 'independent and self-reliant' often work to the disadvantage of such women when they find themselves subject to abuse. They are often deemed to have 'no culture' or constraints that would affect their ability to escape the abuse. Despite evidence that suggests that women from African and Caribbean backgrounds face high levels of domestic abuse, their accounts of abuse or coercion and control are often deemed to be incapable of belief. Any act of retaliation on their part is often treated as an act of aggression, and consequently many are treated as perpetrators of abuse and disproportionately criminalised. For example, in one of the trials observed by the research team, the judge made frequent references to the fact that the

deceased was a 'slight, small man' (he was also White), whereas the defendant was a tall, Black woman. Much attention was also given to reports from friends and family that she had kicked and slapped him, and stabbed him with a fork, despite the fact that there was evidence from the police of his repeated abuse towards her: there was phone evidence of his harassment of her; she had a Domestic Violence Protection Order against him; and there was a panic alarm installed in her home – clearly indicating that he was the primary aggressor.

Another issue faced particularly by women of Afro-Caribbean descent is the institutionalised racism within the police and other criminal justice agencies. Such women may be particularly reluctant to report to the police because of a resistance within their communities to over-policing and fear of social services intervention in their family life. Reporting domestic or sexual violence to the police would be seen as a betrayal within the community. In a recent case, Fareissia Martin, a young, Black, working-class woman from Liverpool who killed her abusive partner, hid the abuse even when attending hospital for her injuries because she was afraid that social services would intervene in the care of her two small children.

Language barriers

The lack of proper interpretation services for women whose first language is not English remains a perennial problem in the criminal justice system, and yet very little work is done to address this. It is another way in which minority women are marginalised and silenced – without

accurate interpretation, few are able to give proper instructions or express themselves in a language with which feel comfortable. Attention is rarely paid to ensuring that interpreters who are provided are of the same sex and have received gender-sensitive training. The lack of such measures inhibits many women from making proper disclosures of abuse, particularly if it is of a sexual nature.

It is vital to understand that even if interpreters are found who speak the same language, there can be different dialects or other linguistic differences. The case of Iqbal Begum cited above remains a classic illustration of what can go wrong when there is little or no attention paid to the need for accurate interpretation. The failure to provide an interpreter who spoke not just her language of Urdu, but also the Mirpuri dialect that she was accustomed to, led to her imprisonment for life for killing her violent husband. She had only been allowed 15 minutes in court with an interpreter, who misunderstood her admitting to her wrongful actions ('gulty' = 'mistake') to mean 'guilty'. Eventually, several years later, her conviction was overturned on the basis of the lack of proper interpretation.

In a more recent case, a woman who was interviewed by the research team explained the difficulties she had experienced accessing an appropriate interpreter, demonstrating that these issues still continue today:

'They got me an interpreter who spoke Brazillian Portuguese and she wasn't interpreting correctly so they got me another interpreter who was from Portugal.'

APPENDIX 3:

MEDIA ANALYSIS - WOMEN WHO KILL

Julie Bindel

Julie Bindel is a co-founder of Justice for Women and has, for the past three decades, worked in the media as a journalist and broadcaster.

Introduction

This Appendix presents the findings of a detailed qualitative study of representations of women who kill as a response to male violence, as reported in the British national press between 2010 and 2020.

As these cases are so rare, many people's knowledge and perceptions of women who kill is derived from how the media portrays such cases. Media portrayal will be based primarily on information from police, prosecutors and reporting on trials. Expert knowledge and information from academic and practitioner specialists is filtered through the press (and sometimes significantly distorted) for public consumption.

As part of the mainstream media, the press is a critically important source of information, which helps to shape and construct the reality it claims to represent. News is a cultural product that reflects the dominant cultural assumptions about who and what is important, determined by race and ethnicity, sex, class, wealth and nationality. In an era in which we are constantly surrounded by multiple forms of media, the news can clearly influence what we think and do.

This is not to suggest that people are passive recipients, moulded by media influences without any capacity for critical reflection. However, the media not only reflects our dominant cultural assumptions about what is normal, but also helps to create and reinforce them. Under the right circumstances, the media can play a role in challenging those views.

Methodology

The analysis of individual cases is based on my personal experience and includes my views and perspectives as a feminist law reform campaigner who was directly involved in a number of the cases.

A cross-section of reports taken from a variety of news outlets was sourced to put together a comparative, quantitative and qualitative analysis of reporting methods on women who kill. Some 119 news stories of individual cases (some of which would have more than one headline) were analysed.

Reports were taken from national and local press to provide the broadest possible scope on reporting methods: there was no bias in choosing one press outlet over another; it was collated on the basis of whatever website had reported on the individual case.

A comparative analysis of a smaller number of cases of men who kill women who are known to them is included. This analysis is more limited in scope (21 cases were analysed) due to time constraints when researching. These cases were selected on a random basis from a five-year period between 2014 and 2019. Thus, whilst the difference in size samples means it cannot be a direct comparator, with caveats, it does provide a contrast to illustrate the different approach to reporting on such crimes.

Women who kill: themes in reporting

There is one recurring theme which emerges in press reports of women who kill their abuser: the vilification of the woman involved. In almost all reports, she is presented as being worthy of hatred and/or scorn. This is achieved through a variety of reporting mechanisms, such as the use of visceral language regarding the murder weapon and/or method; personal characteristics/personality traits; as if they have somehow escaped punishment; a comment on their lifestyle; and a mockery of why they resorted to killing the men in the first place.

Vilification of the women

Graphic details of the homicide

The level of detail used to describe the method of killing and the manner in which the person died is often more graphic than that used in the reporting of men who kill women known to them. For example: 'she hit him with a meat tenderiser', 'brutal', 'blood soaked', 'plunged knife through the heart', 'sickening', 'hammer murder', 'claw hammer', 'beaten to death with hammer', 'hammer attack', 'dumped in freezer', 'stabbed in heart' and 'frenzied attack'.

In the case of Natasha Welsh, many of the reports used medical terms such as 'pierced lung and aorta'. One report said: 'Mrs Welsh had been drinking beer, wine and spirits throughout the evening when she lodged the knife in her husband's lung and aorta, a jury was told.'

Described as the 'wife with the strength of 10' and 'lunatic mother' in the Daily Mirror and Daily Mail respectively, in 2019 Natasha Welsh was convicted of the murder of her husband Martin, and given a life sentence and ordered to serve a minimum sentence of 15 years.

The percentage of reports that made a reference to a weapon or method of killing used was just over 80%. In these instances, terms such as 'stabbed' were employed to infer that a knife was used in the killing. Sensationalist language, such as 'brutal', 'blood soaked' and 'plunged', was used in 68% of the reports.

Jealousy as motive

Also very common was the theme of the jilted woman. Words such as 'jealous', 'bitter', 'furious at break-up', 'jilted', 'ex-lover' and 'love triangle' were all commonly deployed, as well as mentions of how often the woman had been married. Just over 10% of reports related to the perceived jealousy of the women who killed.

There are a number of cases in which the reporter uses a description of the defendant as being in a 'fit of rage' brought about by jealousy. There are phrases used such as 'if she can't have him, no one can'. This ascribes a motive of jealousy and of the defendant as a type of possessive woman.

If the female defendant was a 'bride-to-be' or a fiancée, this was often explicitly mentioned. The percentage of reports that specifically referred to the woman as a 'wife', 'bride' or 'fiancée' was just over 10%. This was across individual women, not related to individual media reports, and the percentage of multiple references was 16%.

Comical

The use of mockery was very prevalent. Reports would either describe the killing in an almost comical way in what may be an attempt to portray the women as deeply unhinged, or they would portray the trigger of the killing as something completely inconsequential. On the first point, some reports used terms, such as 'wheelie bin murderer', 'locked in cupboard', or 'killed with rolling pin' and 'bantered while killed'.

Trivial motives

Many of the reports presented the trigger to the homicide as something so inconsequential that it could not possibly constitute a reason for taking such drastic action, thereby painting the woman as irrational. Some examples follow.

Angela Ayre killed her husband after he wet himself and was 'urine soaked'. Caroline Loweth's husband allegedly killed himself by 'falling on the blade while peeling vegetables', but this argument was disbelieved and Caroline Loweth was convicted of murder. Terri-Marie Palmer killed because her partner was 'using Facebook too much'. Olive Ripley killed because her partner 'gave away their bedding'. Leonora Sinclair killed because they 'couldn't decide whether to watch Harry Hill or not'. Lisa Withers killed because she 'had a shit birthday'. Lesley Culley was portrayed as killing her husband over an 'unmade bed' (he called her a 'lazy bitch' because she had not done it). The effect of this is to portray the women as so delusional and mentally ill that they would kill over something trivial, and not because of other underlying factors (such as abuse and domestic violence).

What might be perceived as a 'small' act may actually be part of a much wider pattern of abuse, particularly in the light of a new and emerging understanding of the role that coercive control plays. As outlined at various points in the main research report, the attempts by perpetrators to control and monitor every aspect of their victims' lives can result in a desperate and fatal attempt to break free.

The 'violent woman': a deviation from the rules

By committing a violent act, whether in self-defence or through anger, a woman has already digressed from the norm. Cultural norms suggest that if she is a mother, she is supposed to be nurturing, caring and loving. As a wife, she should certainly not strike out in response to domestic violence. In short, a woman who kills is the exact opposite of the stereotype of a 'good' woman.

Media discourse presents such women as mad and/or bad, thereby removing the opportunity for that woman to be presented as an individual who sanely defended herself against a potentially lethal act of violence. For women who kill as a response to sustained male violence, the reality is usually that she kills out of desperation to stop him from committing the final, fatal act against her. Conversely, men who kill their female partners are often seen as behaving rationally and justly (see analysis of men who kill below).

'Why didn't she leave?'

When citing nagging or alleged infidelity as a reason for killing their female partners, men are never asked, 'Why didn't he leave her?' In 200 media reports of such crimes, downloaded from Lexis Nexis and examined as part of a separate piece of research, not once was this question asked.

However, 30 of the 119 media reports included in the present analysis report this same question being asked by the prosecution, judge or family members of the deceased. 'Why didn't she leave him?'

Descriptions of the women's mental state

Women being described as 'crazy', 'hysterical', 'sobbing', 'sobs and shouts', 'temper tantrums', was very prevalent. This has the effect of presenting the women as being overwhelmed by 'typically female emotions', and not being able to keep themselves in check, thereby reinforcing pre-existing sexist/misogynist attitudes about how women behave.

Furthermore, women were often described as 'pestering' or 'hounding', and they were accused of having 'moaned' – all of which are euphemisms for 'nagging'.

Such language evokes the idea that these women deserved whatever abuse they may have been experiencing, and that their reactions were completely disproportionate. Even when domestic abuse/violence was detailed, the women were often described as suffering from 'battered wife syndrome'. This is subjective, but in my mind this does not evoke sympathy on the reader's part and is quite a specific choice of language compared to the reporting on someone like Joanne Williams (who was portrayed sympathetically, in relative terms – see below for further analysis of this case). Furthermore, even when the women have experienced catastrophic abuse, this is glossed over. For example, the reporting on Barbara Coombes rarely mentioned that she was a survivor of years of childhood sexual abuse at the hands of the man she killed, despite this being central to the context.

'Othering' women through external vulnerabilities

Women were often 'othered' in the way that they were described as being drug dependent and/or involved in prostitution, therefore characterising them as women who were deserving of any abuse they may have experienced at the hands of the deceased. For example, Sophie Butler was called a 'whore' by her partner prior to his death: but what will this word make the reader think of her? It may make them think, 'She was a whore', therefore reinforcing the misogynist attitudes of the reader when it comes to their perception of her as a bad person, and their perception of him as a harmless victim. See also Daive Pupeliene who was called a 'hooker'; and Natalia Woolley who was called a 'Russian prostitute', 'call girl' and 'escort'. The 'deserving and non-deserving' victim – that is, that she was somehow culpable or to blame – is the undertone here.

Depictions of drug addiction were often used to paint the women as belonging to an underclass. For example, women might kill as part of a 'drug-fuelled row', or because they were a 'heroin mum', or after a 'boozy and drug-fuelled night in'. This is a typical divisive rhetoric where the women are portrayed as 'scroungers' who kill to feed their addiction and do not deserve our sympathy.

A common theme used within a context of vilifying the women was the suggestion of 'stupidity' or low intelligence. Was the woman 'forgetting' she had the weapon when she attacked the man and therefore killed him by

mistake? This was often reported in a way that made her actions appear ridiculous and fanciful, as opposed to the woman actually having a legitimate fit of rage while she happened to be holding a weapon.

Sympathetic portrayal of men

Occasionally, the description of fatherhood was used to evoke sympathy, reinforcing the disdain for the woman. She has 'taken the child's father away', or 'denied the man the chance of being a father' (for examples, see the cases of Janet Taylor, Natasha Welsh and Clara Butler).

The percentage of reports that referred to whether or not the man was a father was just over 10%.

In two of the cases, the deceased were members of the armed forces. Izabela Dauti ('84-year-old veteran') and Sun Maya Tamang ('ex-Ghurkha'). Therefore, the women were further vilified for killing men who had been described as 'heroes'.

Representations of race and ethnicity

Race and ethnicity were sometimes used in a clear attempt to capitalise on pre-existing reader prejudices, with terms such as 'Muslim' and 'devout' (for example, Faria Khan) being deployed, which arguably is intended to act as an aggravating factor for readers by playing on pre-existing prejudices as regards the woman's faith and/or religion.

Hasna Begum was described as being '4ft 11' in coverage, in what is clearly

an attempt to make light of the fact she is short, therefore adding an extra element of misogyny to the reporting in criticising her physical appearance.

Class status

Class is often alluded to in media reports of women who kill. A common misconception is that domestic violence and abuse is disproportionately experienced by working-class women, or that middle-class women can easily leave a violent relationship.

Women with money are often judged negatively and treated with suspicion. Samantha Brown, who killed her violent boyfriend in 2010, was described as 'glamorous'. Jennifer Parkinson was described as having a £1 million property empire; Nicole Triplett was called a 'lottery winner'; and Kristi Windsor was labelled as 'horse-trained'. Arguably, this has the effect of enhancing the pre-existing misogyny of the reader in a way to present these women as 'upper-class/snooty bitches' (a catch-all implication as opposed to a literal description), who see killing men as nothing more than a game. This further vilifies the women as those that the reader can legitimately despise. Not only have they killed men, but also as being conspicuous consumers and with more money than the men they have killed.

A distinct lack of analysis

Blatant stereotyping is prevalent in news reporting around the world, and many news reports use language and images that reinforce sexist stereotypes in a

subtle way. Unsurprisingly, news stories frequently miss opportunities to analyse issues that differentially affect men and women from a non-sexist perspective, particularly male violence against women. An interesting illustration of this is to contrast the reporting on the Sally Challen case. At the time of the homicide and subsequent trial in 2011, the narrative, largely reflecting the prosecution case against her, was that of a jealous wife, stalking her husband and driven to kill because she feared he would leave her. In contrast, following the campaign by Justice for Women and Sally's son, David Challen, and Sally's subsequent appeal, the dominant narrative reported a woman subjected to coercive and controlling behaviour by her husband who she had met aged 15, with numerous mentions of 'gaslighting', and descriptions and commentary on his behaviour and abuse towards her spanning four decades.

Of the cases analysed, only two were reported in a way that highlighted the plight of the defendant in a sympathetic manner.

Sarah Sands killed her 'paedophile neighbour'. Coverage was almost uniformly condemning of the deceased. In all tabloid newspaper reports, details of his offences against children appeared to cancel out the action of the defendant. There were certainly hints in the reports that he 'deserved' to die. Whilst society's horror of child abusers trumps that of domestic abusers, the connections that should be made between the two rarely are. For example, the effects on children who witness domestic abuse are well documented¹⁵².

The case of Joanne Williams was reported by a number of newspapers, with details of the domestic abuse she had endured that led to the killing. The facts of domestic violence provided a portrait of a woman driven to kill. The headline in the Gloucestershire Echo (24 February 2016) was 'Years of violence provoked woman to kill her partner'. In this case, prosecutors accepted Joanne Williams' guilty plea to manslaughter on the grounds of diminished responsibility.

The majority of cases involve women who kill an abusive partner or ex-partner, but nevertheless this crucial information is often not included. To speculate, it would appear that the reporter was conscientious in gathering the facts of this case, and it would appear that the deceased was a notorious character locally and known to be violent.

Men who kill analysis

Luke and Ryan Hart are campaigners against domestic violence. In 2016, their father shot and killed their mother Claire and their 19-year-old sister Charlotte, before taking his own life. In the aftermath of the murders, the media described the killer as a 'nice guy' who was 'always caring' and 'good at DIY'. One report even stated that the murders were 'understandable'. Many press reports published the killer's suicide note rather than the 'murder note' to the two victims. The murders were simply treated as an isolated, random and unpreventable tragedy for which nothing needed to change.

These men kill because they believe they can. In fact, they believe they should kill in order to assert their masculine dominance. The emotional language used in the media often misrepresents the motivations of men who kill women and children. They are not 'provoked', they do not 'snap', they do not 'lose it'. These are calculated, cold-blooded and hyper-rational killings.

There can be no doubt that the media both reflects and promotes a sexist, often misogynistic, discourse about spousal homicide. The disparity in the way men who kill 'nagging' and 'unfaithful' partners are described compared to the narrative when women respond to domestic violence is clear. These women are not only the victims of injustice from the courts, but also through the press and wider media.

In contrast to the prevalence of graphic detail and explicit imagery in almost every instance of the reporting on women who kill (WWK), the most striking feature of the coverage of men who kill (MWK) is the lack of detail about their crimes.

Two points of analysis can be drawn from this: first, the contrast between the way that men and women (in cases of spousal homicide) are described. One of the common themes in WWK is that the coverage went to great lengths to describe in graphic detail how 'brutal', 'violent' and 'frenzied' many of the attacks were, with specific reference to the method of killing (usually stabbing) being found in more than 80% of WWK reports.

Of the 21 MWK reports analysed, all contained a reference to the method used to kill within the headline. Less than one third (n=six) used phrases such as 'brutally' or 'frenzied', compared to more than 68% of reports of WWK.

Taking the six reports that contained any reference to the violence of the attack, terms used were:

- 'Senseless' (Michael Strudwick).
- 'Serious head injuries' (Darren Constantine).
- 'Toxic mixture of rage and self-pity' (Ian Levy). It is important to note here that Levy stabbed his partner 86 times, which when compared to stabbings occurring with WWK, would have usually warranted a 'brutal' or 'frenzied' descriptor. However, the headline simply states 'Jeweller who stabbed partner 86 times...' (Daily Mail).
- 'Man who stabbed girlfriend to death after getting her addicted to crack' (Michael Marler). This was the most sensationalist headline available and, even then, it focuses more on the drug addiction as a qualifier than any specific violence or brutality.
- 'Bizarre and violent sado-sex' (Jason Gaskell). The 'bizarre' here arguably being used to reduce to impact of the violence, as something out of the ordinary or 'not normal'.
- 'Drink and drug- fuelled frenzy' (Mark Minott). Again, this was a 'charitable' inclusion in the sense that it does not really reference the manner of killing, but rather the events leading up to it.
- 'Sustained and prolonged' (Anthony Bird).

In each of the 119 WWK reports there was always a reference to either the method of killing, the brutality of the action, or the personal characteristics of the woman (jealous, bitter, crazy etc), and often a combination of these reporting styles. While the MWK were sometimes described in these ways, many of them were not, with the language ultimately being vague and relatively objective ('murdered', 'killed' etc).

While this comparative sample is small, it is to be expected that if it were expanded to the same level as the WWK analysis (119 cases), the figures would scale consistently in line with the findings here (ie, not increase dramatically above the percentages given above). There is a clear difference in the way MWK and WWK are described in reporting, and this appears to track across both tabloid and broadsheet/ websites such as BBC/ITV news, with less focus given to the method of murder and the brutality/violence elements, and an overall impartial or dispassionate tone used.

Conclusion

Pre-existing sexist attitudes are at the heart of much of the media coverage of women who kill as a response to male violence. Such sexism is not merely confined to tabloid newspapers, but also on BBC News online coverage and respected broadsheets.

Sexist stereotypes are regularly deployed to vilify the women, while mocking their physical appearance and mental cognition in an effort to further

debase them in the mind of the reader. This is coupled with the sympathetic portrayal of men in whatever way is available, such as fatherhood, positive descriptions, and service in the armed forces.

Reflections and recommendations for future reporting

Following the Sally Challen case, there has been much discussion about responsible/irresponsible reporting of cases involving domestic abuse and homicide. David Challen, who campaigned for his mother's release, has gone on to conduct several training courses on responsible and accurate reporting. Several of the campaigners, and in particular those who work within the media, have also delivered similar courses aimed at training journalists. Any reporters writing about such sensitive issues would benefit from attending such a course, whatever the level of experience.

There is a need for better collaboration and communication between experts on violence towards women and girls, and those disseminating information about the reality of such violence and abuse. The headline in the Sally Challen case that provoked numerous complaints from members of the public is a good illustration of how such major representation can sway opinion, and is a good example of irresponsible reporting.

'Sally Challen: Hammer killer wife in "landmark" appeal' was the BBC online headline on the story about Sally Challen's lawyers being granted

permission to appeal her murder conviction. As a direct result of the campaigning that preceded the appeal, there immediately followed a series of complaints about the headline, which had likely been devised by a sub-editor who relied on earlier BBC coverage. The headline should, and could, have been drawn from information on the compelling new evidence put forward to the court that threw doubt on the murder conviction. Rather, it regurgitated similar headlines from reports during the trial.

Media representations of domestic homicide is often problematic. Campaigners and service providers/advocates need to engage with journalists to understand how and why inaccurate and representations are so commonplace and enduring. Persuasive mythology prevails, such as the absence of any language to describe domestic abuse and prejudicial terms such as 'nagging', 'cheating' and 'jealousy'. Relationships with domestic violence advocates are crucial for journalists to access expertise to help better understand the reality.

APPENDIX 4: THE LEGAL FRAMEWORK SURROUNDING CASES OF WOMEN WHO KILL

Homicide offences in England and Wales

In England and Wales, murder and manslaughter are the two main offences that constitute homicide.

Murder is the unlawful killing of a living person in circumstances in which there is an intention to kill or to cause really serious harm. Legal defences to murder consist of complete defences, which will result in an acquittal, and partial defences, which will result in a conviction for manslaughter. The main complete defences to murder are accident and self-defence. In the case of self-defence, the use of lethal force must be both necessary and proportionate to the threat faced. A conviction for murder will result in a mandatory life sentence.

Manslaughter can be involuntary – in which case, it arises as a consequence of gross negligence or as a consequence of an unlawful act, such as an assault, which was not intended to cause really serious harm. Manslaughter can also be voluntary. Voluntary manslaughter may arise where there was an intention to cause serious harm or to kill, but that intention is mitigated by one of the partial defences of diminished responsibility¹⁵³ or loss of control.¹⁵⁴ These partial defences therefore reduce what would otherwise be an offence of murder to manslaughter. Depending on the circumstances of the offence, sentencing for manslaughter can range from a discretionary life sentence, a term of imprisonment to, in rare cases, a non-custodial sentence.

Legal reforms to homicide laws in England and Wales: partial defences

The Coroners and Justice Act 2009 (the 2009 Act) amended the law on the partial defences to murder. The existing partial defence of diminished responsibility (on which the defence has the burden of proof) was amended to introduce a capacity-based test of 'abnormality of mental functioning'.¹⁵⁵ The abnormality must arise from a recognised medical condition,¹⁵⁶ which substantially impairs a defendant's ability either to understand the nature of her (or his) act, or to exercise rational judgement or self-control.¹⁵⁷ It must also provide an explanation for the killing – in that it caused (or was a significant contributory factor in causing) the defendant to behave in the way that she (or he) did.¹⁵⁸ This is a more tightly constructed concept than the one that previously existed under the unamended section 2 of the Homicide Act 1957.

The 2009 Act also abolished the common law partial defence of provocation,¹⁵⁹ and created the new partial defence of loss of control.¹⁶⁰ This requires there to have been a loss of self-control¹⁶¹ that had a 'qualifying trigger';¹⁶² and includes an objective test that a person of the same sex and age as the defendant, with a normal degree of tolerance and self-restraint, might have reacted in the same, or a similar, way in the same circumstances (section 54(1)(c)).¹⁶³ Under section 55, a loss of control has a 'qualifying trigger' if it is attributable to a defendant's fear of serious violence from V or another identifiable person,¹⁶⁴ or to a thing or things done or said (or both), which constitutes circumstances of an extremely grave character,¹⁶⁵ and which causes the defendant to have a justifiable sense of being seriously wronged.¹⁶⁶ There is a qualifying trigger if the loss of control results from a combination of both a fear of serious violence and circumstances of an extremely grave character that cause a justifiable sense of being seriously wronged.¹⁶⁷

The previous common law defence of provocation was thought to be gendered and was the subject of criticism.¹⁶⁸ Traditionally, men have killed suddenly in anger and jealousy. The new statutory partial defence was intended to introduce parity to the way in which men who kill women and women who kill abusive men are treated by the law. For example, the fact that a 'thing done or said' constitutes sexual infidelity 'is to be disregarded'¹⁶⁹ when considering the trigger to the loss of control. Equally, section 54(2) provides that it does not matter 'whether or not the loss

of control is sudden', and therefore recognises the concept of 'slow burn' – applicable to the way in which women may react to prolonged abuse over time.

In addition to extending the previous law (which dealt only in the currency of provoked anger at something already said or done), section 55 of the 2009 Act now permits fear of an anticipated act, and so better caters for circumstances in which an abused woman kills, by recognising 'the close connection between the emotions of anger and fear and thus between provocation and self-defence'.¹⁷⁰ The test for fear of serious violence is subjective, rather than objective – that is, the defendant must show that she genuinely feared the deceased would use serious violence, 'whether or not that fear was reasonable'.¹⁷¹ This is counterbalanced by the objective test in section 54(1)(c) referred to above. Case law has decided that the reference to the defendant's circumstances in that test precludes mental health conditions that are peculiar to the defendant, although such conditions can affect the gravity of the trigger.¹⁷²

Self-defence

Self-defence is a full defence to murder. It arises from both the common law and section 3 of the Criminal Law Act 1967 (use of force in the prevention of a crime etc). A clarification of the operation of the common law and statutory definition is set out in the Criminal Law and Immigration Act 2008.

Of the 92 case studies in this research, only six women were acquitted on the basis of self-defence. Many of the

lawyers interviewed agreed that self-defence was notoriously difficult to run and was also a high-risk defence to put forward, as a failure to meet all the requirements for the defence could result in a murder conviction. This was evidenced in our case list, where a further 14 women had tried to use self-defence as part of their defence – and had failed.¹⁷³ Also, as noted in the main report, women commonly use a weapon (usually a knife) to defend themselves against a man they know is capable of serious violence. However, the use of a weapon is often considered to be a disproportionate use of force against an unarmed man. If there is any gap in time between the threat faced and the use of force, this is also likely to undermine the self-defence. Furthermore, issues of traumatic memory gaps and substance misuse can interfere with a woman's ability to coherently describe her response to the threat of serious violence faced. Because of these inherent difficulties, many women will take an opportunity to plead guilty to manslaughter (if one exists), rather than risk a life sentence if the self-defence fails.

Our findings are reflected in international studies of the trials of abused women who kill.¹⁷⁴ These also show that women who kill rarely claim self-defence, even when their case has merit. Instead, they tend to opt for partial defences, such as diminished responsibility or loss of control (previously provocation), more often submitting a guilty plea to manslaughter rather than go to trial. These guilty pleas are troubling, because women's decisions are based not on the merits of their case, but on a series of systemic

disincentives. Women are influenced in their decisions by the potentially high stakes of pleading not guilty to murder – having to go to trial, give evidence and be cross-examined – as well as risking higher penalties, such as mandatory sentences and being labelled a 'murderer', should they not succeed.

As evidenced in this research, women who have encountered violence and abuse may face problems with memory brought on by a traumatic response or brain injury. Being unable to recall events fully or in the correct order can make it difficult for women to argue self-defence successfully, as they are perceived as being inconsistent and, therefore, possibly lying. Women are also judged on the way they present as the 'victim' of violence. Some women may be heavily medicated at trial and may be unable to persuade the jury of the high level of fear they experienced. Those who have had counselling and support may not appear sufficiently like a 'victim' or may be accused of being 'primed' for cross-examination. Good legal support is crucial, particularly in supporting women to give evidence and effectively argue that they acted in self-defence.

Women are also disadvantaged as a result of historic, gendered constructions in the law and the way it is routinely applied. Defences to murder, for example, have developed in relation to men's violence to strangers in public, rather than in relation to violence between people who are intimately connected. The legal concepts used in defences to murder, such as 'reasonableness' and 'rationality', are also inherently gendered. The force

used must be 'reasonable' – yet what is considered 'reasonable' has been defined in law from male examples, and arguably excludes women's experiences and patterns of behaviour'.¹⁷⁵

Coercive and controlling behaviour

The Serious Crime Act 2015 (the 2015 Act) made controlling and coercive behaviour a criminal offence in England and Wales.¹⁷⁶ In order to be guilty of the offence, a perpetrator (A) must engage repeatedly or continuously in behaviour which is controlling or coercive¹⁷⁷ towards the victim (B). At the time of the behaviour A and B must be personally connected,¹⁷⁸ the behaviour must have a serious effect on B,¹⁷⁹ and A must know, or ought to know, that it will have a serious effect on B.¹⁸⁰ A and B are 'personally connected' if they are in an intimate relationship with each other, or if they live together and are either members of the same family or have previously been in an intimate personal relationship with each other.¹⁸¹ A's behaviour has a serious effect on B if it causes B to fear, on at least two occasions, that violence will be used against her (or him),¹⁸² or if it causes serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities.¹⁸³ A defence to controlling and coercive behaviour is if A acted in the best interests and if the behaviour was 'in all the circumstances reasonable'.

The offence of coercive control is increasingly being used by law enforcement agencies, but conviction rates remain very low. The most recent Office for National Statistics records

show that just 5% of defendants charged with controlling or coercive behaviour were convicted.¹⁸⁴ Data obtained by the BBC from 33 police forces in England and Wales shows that, while there were 7,034 arrests between January 2016 and July 2018, the perpetrator was charged in only 1,157 cases, suggesting that the police are struggling to gather sufficient evidence.¹⁸⁵ Criticism that police and prosecutors are not pursuing sufficient cases is 'regular and ongoing', and police understanding of coercive control also appears to be poor, hampering their ability to investigate.¹⁸⁶ There is clearly a very long way to go before an understanding of coercive control is properly embedded in the criminal justice system.

However, this new legislation played a central role in the appeal brought by Sally Challen in 2019, where it was argued that the increased understanding of the dynamic of abuse in her relationship with her husband amounted to fresh evidence, undermining the safety of her conviction for murder. Although it is important not to overstate the impact of a single case, Sally Challen's successful appeal has helped to bring about an increased public awareness of coercive control in cases of women who kill, and it is hoped will be considered in future cases.

Making the legal framework work better for women: the Domestic Abuse Bill

The Domestic Abuse Bill was introduced to Parliament in 2019 after a lengthy public consultation, and was re-introduced in March 2020. At the time

of writing, it had not yet concluded its journey through Parliament. The Bill includes a new range of measures designed to protect victims of domestic abuse, and creates a new Domestic Abuse Commissioner. Section 1 includes a new statutory definition of domestic abuse, setting out a range of behaviours including:

- physical or sexual abuse;
- violent or threatening behaviour;
- controlling or coercive behaviour;
- economic abuse; and
- psychological, emotional or other abuse.

Despite these measures, the Bill has many shortcomings and has been subject to intense lobbying and pressure for amendments by specialist women's sector organisations.¹⁸⁷

Proposed amendment to the law on self-defence

The Centre for Women's Justice, with support from the Victims' Commissioner, Designate Domestic Abuse Commissioner and others, has called for an amendment to the law on self-defence to be added to the Domestic Abuse Bill,¹⁸⁸ modelled on the provisions for householders in section 76 of the Criminal Justice and Immigration Act 2008. This would allow survivors acting in self-defence against their abuser the same protection that is currently available to householders who act in self-defence against an intruder in the home.

The law on self-defence allows the use of reasonable force and has been clarified by section 76 of the Criminal

Justice and Immigration Act 2008. In general, the use of force must be proportionate. However, subsection 76(5A) allows householders to use disproportionate force when defending themselves against intruders in the home. A householder can therefore use force that is disproportionate (but not grossly disproportionate), provided the degree of force is reasonable. As Crown Prosecution Service guidelines state:¹⁸⁹

'The provision must be read in conjunction with the other elements of section 76 of the 2008 Act. The level of force used must still be reasonable in the circumstances as the householder believed them to be (section 76(3)).

In deciding whether the force might be regarded as "disproportionate" or "grossly disproportionate" the court will need to consider the individual facts of each case, including the personal circumstances of the householder and the threat (real or perceived) posed by the offender.'

The proposed amendment would replicate this provision for cases in which the force was used by the defendant (D) against someone (V) who was perpetrating domestic abuse against them. This would mean that, in such circumstances, the defence could still succeed if the degree of force used by D was 'disproportionate' (but not if it was grossly disproportionate), provided it was reasonable in the circumstances as D believed them to be and taking into account all the factors set out in section 76. This would ensure that those who act in self-defence in response to domestic abuse receive the same level of protection as those acting in response to an intruder in their home. Of the 31 criminal defence lawyers who responded to a recent survey, more than two-thirds believed that this would provide a more effective defence than the current law.¹⁹⁰

This amendment should be accompanied by a policy framework to aid implementation, drawing on existing policies in place to support section 45 of the Modern Slavery Act 2015. This should include provision of support for survivors and special measures to protect vulnerable defendants. Statutory guidance, training for criminal justice agencies and judicial directions are also required. Guidance should focus on the nature of domestic abuse, its impact on the behaviour of survivors, the manner in which this should be taken into account in criminal proceedings against a defendant or suspect who is a survivor of such abuse, and the need for a culturally informed response to women in minority ethnic groups and of minority religions.¹⁹¹ The legislation and surrounding framework would have the

significant added benefit of encouraging earlier disclosure of abuse and access to support, helping to break the cycle of victimisation and offending.

Conclusion

This research and the years of experience of Centre for Women's Justice in these cases make clear that both the law itself and the way in which it is implemented are of fundamental importance to ensuring justice is served in cases where women kill their abusers, and that reform is needed on both fronts.

ENDNOTES

- 1 [Murder, Manslaughter and Infanticide](#) (2006) The Law Commission
- 2 [Female Offender Strategy](#) (2018) Ministry of Justice
- 3 [Joint Recommendations on the Domestic Abuse Bill](#) (2020) Women's Aid Federation England.
- 4 For example, between April 2008 and March 2018 in England and Wales, 108 men were killed by women who were their partners/ex-partners. In comparison, nearly eight times as many women (840) were killed by men who were their partners/ex-partners during the same period. [Homicide in England and Wales: year ending March 2018 - Appendix Tables](#) (2019) Office for National Statistics.
- 5 Bishop, C. (2016) 'Domestic violence: the limitations of a legal response', in S. Hilda and V. Bettinson (eds) *Interdisciplinary Perspectives on Protection, Prevention and Intervention*, Palgrave Macmillan. Hester, M. (2006) 'Making it through the criminal justice system: attrition and domestic violence', *Social Policy and Society* 5(1): 79.
- 6 [Triple Whammy: The Impact of Local Government Cuts on Women](#) (March 2019) Women's Budget Group.
- 7 [Life Changing and Life-saving: Funding for the Women's Sector](#) (March 2018) Women's Budget Group.
- 8 See *R v Thornton* [1995], *R v Ahluwalia* [1992] and *R v Humphreys* [1995] 4 All ER 1108, which together introduced the concept of cumulative provocation (as opposed to provocation consisting of an isolated incident) to take into account that women are more likely to respond to a cumulation of provocative acts rather than in anger to a final provocation which caused a sudden and temporary loss of control.
- 9 For example, just six of the 92 cases included in this research resulted in acquittal on the basis of self-defence.
- 10 Walklate, S., Fitz-Gibbon, K. and McCulloch, J. (2018) 'Is more law the answer? Seeking justice for victims of intimate partner violence through the reform of legal categories', *Criminology and Criminal Justice*, 18(1).
- 11 Temkin, J. (2010) 'And always keep a hold of nurse for fear of finding something worse: challenging rape myths in the courtroom', *New Criminal Review*, 13(4): 710.
- 12 s.2 Homicide Act 1957, as amended by s.52 Coroners and Justice Act 2009.
- 13 ss.54–55 Coroners and Justice Act 2009.
- 14 s.76 Serious Crime Act 2015.
- 15 [United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders \(the Bangkok Rules\)](#) (October 2010) United Nations General Assembly.
- 16 UN Convention on the Elimination of all forms of Discrimination against Women
- 17 Manjoo, R. (May 2015) [Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences: Mission to the United Kingdom of Great Britain and Northern Ireland](#), United Nations General Assembly.
- 18 [Homicide in England and Wales: Year Ending March 2019 – appendix tables](#) (May 2019) Office for National Statistics.
- 19 [Homicide in England and Wales: Year Ending March 2019 – appendix tables](#) (May 2019) Office for National Statistics.
- 20 Long, J., Wertans, E., Harper, K., Brennan, D., Harvey, H., Allen, R. and Elliott, K. (2020) [UK Femicides 2009 – 2018](#), Femicide Census.
- 21 For example, in her study of women who kill abusive partners in Scotland, MacPherson focused on 61 cases that had occurred between December 1988 and April 2013. In 51 of these cases, the context of the fatality was domestic abuse; in 10 cases it was unclear. Macpherson, R. (2015) *Access to Justice: Women Who Kill, Self-defence and Pre-trial Decision Making* (Doctoral Dissertation), Glasgow Caledonian University.
- 22 For example, Sheehy, E. (2014) *Defending Battered Women on Trial: Lessons From the Transcripts*, UBC Press.
- 23 For example, Macpherson, R. (2009) 'Battered woman syndrome, diminished responsibility and women who kill: insights from Scottish case law', *Journal of Criminal Law*, 83(5): 381–393.
- 24 Three of these cases were joint enterprise cases where women were implicated in a killing carried out by their abusive partner/ex-partner. In one of these cases, the woman was involved in killing her ex-partner who had been abusive to her in the past. In the other two cases, women were involved in killing men known to them, but there was no evidence of previous abuse from the deceased. See Appendix 1 for further details.
- 25 Data on education was not collected from the remaining three women.
- 26 The [Criminal Cases Review Commission](#) is an independent organisation set up to investigate suspected miscarriages of justice from magistrates' courts, the Crown Court in England, Wales and Northern Ireland and the Court Martial and Service Civilian Court. See the section on appeal for further information about the CCRC.
- 27 FOI 58280.
- 28 [Homicide in England and Wales: Year Ending March 2018 – appendix tables](#) (2019) Office for National Statistics.
- 29 FOI 60844.
- 30 This research study includes a small number of cases of women who killed men who were not their partner/ex-partner, but where there was a history of abuse – for example, from a relative or family member.
- 31 This evidence was collated from information in the public domain, primarily media reports, which were then compared with other secondary and primary data sources where available – for example, domestic homicide review reports, CCRC reports, interviews with women, discussions with lawyers, and trial observations.
- 32 The Femicide Census found that, of the 1,425 cases, overkill – the use of excessive brutality or violence to kill – was present in 55% of cases. 47% of women were killed using sharp instruments, 20% were strangled, 16% were killed using a blunt instrument, and 15% were killed by kicking/stamping/hitting.
- 33 In the remaining four cases, women were convicted of other crimes, considered unfit to stand trial, or the outcome is unknown.
- 34 In the remaining two cases, the sentence is unknown.
- 35 In the remaining two cases, the sentence is unknown.

36 Sheehy, E., Stubbs, J. and Tolmie, J. (2014) 'Securing fair outcomes for battered women charged with homicide: analysing defence lawyering in R v Falls', *Melbourne Law Review*, 38: 666–708.

37 This is likely to be an underestimate, as for ethical reasons the methodology specifically avoided the topic of prior abuse. See Appendix 1 for further detail.

38 Bishop, C. (2016) 'Domestic violence: the limitations of a legal response', in S. Hilda and V. Bettinson (eds) *Interdisciplinary Perspectives on Protection, Prevention and Intervention*, Palgrave Macmillan. Hester, M. (2006) 'Making it through the criminal justice system: attrition and domestic violence', *Social Policy and Society*, 5(1): 79.

39 For evidence of police failings see [CWJ launch super-complaint: police failure to use protective measures in cases involving women and girls](#) (March 2019) Centre for Women's Justice.

40 Humphreys, C. and Thiara, R. (2003) 'Neither justice nor protection: women's experiences of post-separation violence', *Journal of Social Welfare and Family Law*, 25(3): 195–214.

41 For example, research has shown that female asylum-seekers in the UK are less likely to call the police after experiencing abuse because of fears about information sharing between public agencies and poor responses, including abuse from criminal justice agencies in the past. Dudhia, P. (February 2020) *Will I Ever Be Safe? Asylum-seeking Women Made Destitute in the UK*, Women for Refugee Women.

42 Case monitoring 1.

43 Case monitoring 5.

44 Sheehy, E. (2014) *Defending Battered Women on Trial: Lessons From the Transcripts*, UBC Press.

45 This woman was interviewed as part of the case monitoring (her trial was observed by the research team and she spoke to the research team during this process), rather than in the 20 interviews with women.

46 See Stark, E. (2007) *Coercive Control: How Men Entrap Women in Personal life*, Oxford University Press for further analysis of the jeopardisation of women's rights and liberties, including their own moral compass, in the context of abusive relationships.

47 Sheehy, E. (2014) *Defending Battered Women on Trial: Lessons From the Transcripts*, UBC Press.

48 DHR report 18.

49 Monckton Smith, J. (2020) *Intimate Partner Femicide: Using Foucauldian Analysis to Track an Eight Stage Progression to Homicide*, *Violence Against Women*, pp1267–1285.

50 Bettinson, V. and Bishop, C. (2017) 'Evidencing domestic violence, including behaviour that falls under the new offence of controlling or coercive behaviour', *The International Journal of Evidence and Proof*, 22(1): 3.

51 At the outset of any police interview of an arrested person, the police caution that although the detainee has the right to remain silent, if they do not mention something they later rely on in their defence, an adverse inference may later be drawn.

52 Guidance accompanying the Government's [Female Offender Strategy](#) sets out expectations for the police to use a gender-informed approach to women involved in offending, including building their expertise and confidence to assess needs at the beginning of the process and working in partnership with frontline community services.

53 See Appendix 2 for more detailed analysis of particular barriers to accessing justice experienced by women from Black, minority and ethnic (BME) communities.

54 [Domestic Abuse Guidelines for Prosecutors](#) (2020) Crown Prosecution Service.

55 Macpherson, R. (2015), *Access to Justice: Women Who Kill, Self-defence and Pre-trial Decision Making* (Doctoral Dissertation), Glasgow Caledonian University. Clarke, B. and Chadwick, K. (2020) *Stories of Injustice: the Criminalisation of Women Under Joint Enterprise Laws*, Manchester Metropolitan University.

56 Sheehy, E., Stubbs, J. and Tolmie, J. (2014) 'Securing fair outcomes for battered women charged with homicide: analysing defence lawyering in R v Falls', *Melbourne Law Review*, 38: 666–708.

57 Macpherson, R. (2015) *Access to Justice: Women Who Kill, Self-defence and Pre-trial Decision Making* (Doctoral Dissertation), Glasgow Caledonian University.

58 Tolmie, J. Tarrant, S. and Giudice, G. (2019) *Transforming Legal Understandings of Intimate Partner Violence*, ANROWS.

59 [The Nature of Violent Crime: appendix tables](#) (year ending March 2019) (2020) Office for National Statistics.

60 Sheehy, E., Stubbs, J. and Tolmie, J. (2014) 'Securing fair outcomes for battered women charged with homicide: analysing defence lawyering in R v Falls', *Melbourne Law Review*, 38: 666–708.

61 Sakande, N. (2020) *Righting Wrongs: What Are the Barriers Faced by Women Seeking to Overturn Unsafe Convictions or Unfair Sentences in the Court of Appeal (Criminal Division)?* The Griffins Society.

62 [The Freedom Programme](#) is a domestic violence programme which was created by Pat Craven and evolved from her work with perpetrators of domestic violence. The Freedom Programme is delivered by hundreds of agencies across the UK, including prisons.

63 Wiener, C. (2017), *Seeing what is invisible in plain sight: policing coercive control*, *Howard Journal of Crime and Justice*, 56(4): 500–515.

64 See Stark, E. (2007) *Coercive Control: How Men Entrap Women in Personal Life*, Oxford University Press.

65 The offence of coercive and controlling behaviour was introduced in England and Wales by the Serious Crime Act 2015 and, in a different form, by the Domestic Abuse (Scotland) Act 2018 in Scotland. The Domestic Abuse and Family Proceedings Bill, introduced in Northern Ireland in March 2020, is intended to create a new domestic abuse offence for Northern Ireland that will capture patterns of controlling and coercive behaviour, as well as physical abuse, against a partner, former partner or family member.

66 Tolmie, J. (2018) 'Coercive control: to criminalise or not to criminalise? *Criminology and Criminal Justice* 50, 18(1): 9. Walklate, S. and Fitz-Gibbon, K. (2019) 'The criminalisation of coercive control: the power of law?', *International Journal for Crime, Justice and Social Democracy*, 8(4): 94.

67 Wiener, C. (2020) 'From social construct to legal innovation: the offence of controlling or coercive behaviour in England and Wales', and Bettinson, V. (2020) 'A comparative evaluation of offences: criminalising abusive behaviour in England, Wales, Scotland, Ireland and Tasmania', in M. McMahon and P. McGorry (eds) *Criminalising Coercive Control: An Introduction*, Springer.

68 Sheehy, E. (2014) *Defending Battered Women on Trial: Lessons From the Transcripts*, UBC Press.

69 [Crown Court Compendium](#) (updated December 2020), Courts and Tribunals Judiciary.

70 Sheehy, E., Stubbs, J. and Tolmie, J. (2014) 'Securing fair outcomes for battered women charged with homicide: analysing defence lawyering in R v Falls', *Melbourne Law Review*, 38: 666–708.

71 Case monitoring 5.

72 Case monitoring 1.

73 A Test of Malignant Memory (TOMM) is a visual recognition test to help distinguish between malingered and true memory impairments.

74 CCRC file review: 1/2/8/15/16.

75 Hopper, J. and Lisak, D. (2014) [Why Rape and Trauma Survivors Have Fragmented and Incomplete Memories](#), *Time*. See also Kopelmann, M. (2013) 'Memory disorders in the law courts', *Medico-Legal Journal*, 81(1): 18–28.

76 This is evidenced in wider research. For example, Dobash, R. and Dobash, R. (2004) 'Women's violence to men in intimate relationships: working on a puzzle', *British Journal of Criminology*, 44: 324–329.

77 The Centre for Women's Justice (CWJ) receives many inquiries from women who are arrested by the police, and sometime prosecuted when they are the primary victim of domestic violence. CWJ is in the process of collating evidence of such cases in order to improve criminal justice responses to domestic violence going forward. See also Hester, M. (2009) [Who Does What to Whom? Gender and Domestic Violence Perpetrators](#), University of Bristol in association with the Northern Rock Foundation.

78 Hester, M. (2009) [Who Does What to Whom? Gender and Domestic Violence Perpetrators](#), University of Bristol in association with the Northern Rock Foundation.

79 CCRC file review 11.

80 CCRC file review 12.

81 CCRC file review 16.

82 See Appendix 2 for further analysis of the experiences of BME women who kill abusive partners.

83 The concept of an 'ideal victim' is evidenced in wider research. See Christie, N. (1986) 'The ideal victim', in E. Fattah (ed) *From Crime Policy to Victim Policy*, Macmillan, pp17–30.

84 Case monitoring 1.

85 Case monitoring 6.

86 Gezinski, L. Gonzalez-Pons, K. and Rogers, M. (2019) Substance Use as a Coping Strategy for Survivors of Intimate Partner Violence: Implications for Safety and Service Accessibility, *Violence Against Women*, pp1267–1285.

87 Galvini, S. (2010) 'Grasping the nettle', in *Straight Talk, Alcohol Concern*, ppi–xiii.

88 The defence of diminished responsibility requires that the abnormality of mental functioning attributable to a recognised medical condition need only be a significant contributory factor in causing her conduct.

89 CCRC file review 3.

90 Case monitoring 1.

91 The challenges of identifying medical experts with the necessary expertise in violence against women is discussed in Sheehy, E., Stubbs, J. and Tolmie, J. (2014) 'Securing fair outcomes for battered women charged with homicide: analysing defence lawyering in R v Falls', *Melbourne Law Review*, 38: 666–708.

92 Sheehy, E., Stubbs, J. and Tolmie, J. (2014) 'Securing fair outcomes for battered women charged with homicide: analysing defence lawyering in R v Falls', *Melbourne Law Review*, 38: 666–708.

93 Of the 888 women who were killed by partners or former partners in the UK between 2009 and 2018, 378 had separated or taken steps to separate from the perpetrator, evidencing the high risk to women post-separation. Long, J., Wertans, E., Harper, K., Brennan, D. Harvey, H., Allen, R. and Elliott, K. (2020) [UK Femicides 2009–2018](#), Femicide Census.

94 Sheehy, E., Stubbs, J. and Tolmie, J. (2014) 'Securing fair outcomes for battered women charged with homicide: analysing defence lawyering in R v Falls', *Melbourne Law Review*, 38: 666–708.

95 R v Turner [1975] 60 Cr. App. R 834 at 841–842.

96 This was on appeal and the Court of Appeal did not need to admit the evidence because: a) the court had an understanding of what coercive control was; and b) because the fresh psychiatric evidence, which was also the subject of the appeal, was predicated on an understanding of coercive control.

97 It is worth noting that when reviewing applications, the CCRC also has to predict the chances of the Court of Appeal receiving into evidence a new expert report.

98 CCRC file review 6.

99 Bichard, H., Byrne, C., Saville, C. and Coetzer, R. (May 2020) 'The neuropsychological outcomes of non-fatal strangulation in domestic and sexual violence: a systematic review', submitted to *Neuropsychological Review* (in review).

100 Sheehy, E., Stubbs, J. and Tolmie, J. (2014) 'Securing fair outcomes for battered women charged with homicide: analysing defence lawyering in R v Falls', *Melbourne Law Review*, 38: 666–708.

101 For further details of sentences received, see the section on prevalence and criminal justice outcomes for women.

102 s.1 The Murder (Abolition of the Death Penalty) Act 1965, s.269 Criminal Justice Act 2003 and Sch.21.

103 [Sentencing Guidelines for Use in Crown Court](#) (2018) The Sentencing Council.

104 [Prison: The Facts – Bromley Briefings Summer 2019](#) (2019) Prison Reform Trust.

105 The starting point for the length of the term is determined with reference to s.269 Criminal Justice Act 2003 and Sch.21.

106 See note 32.

107 Sakande, N. (2020) [Righting Wrongs: What Are the Barriers Faced by Women Seeking to Overturn Unsafe Convictions or Unfair Sentences in the Court of Appeal \(Criminal Division\)?](#), The Griffins Society.

108 In addition to the eight women mentioned, six women had appealed their conviction and been refused, two women had appealed and been successful, two women were currently appealing their conviction, and two women did not want to appeal.

109 Further information about the appeals process can be found at [Can I Appeal My Criminal Conviction?](#) (2017), The Appeals Barrister.

110 The [Criminal Cases Review Commission](#) is an independent organisation set up to investigate suspected miscarriages of justice from magistrates' courts, the Crown Court in England, Wales and Northern Ireland and the Court Martial and Service Civilian Court.

111 The statutory test that applies to CCRC decision making is covered in s.13 Criminal Appeal Act 1995 and also s.23(2)(d) Criminal Appeal Act 1968. Further information about CCRC decision making is available on the [CCRC website](#).

112 [In the Court of Appeal \(Criminal Division\) 2018-19](#) (2019) Court of Appeal.

113 Since its establishment in 1997, the CCRC has referred, on average, 30 cases per year. In 2019/20, the CCRC received 1,334 applications, 29 of which were sent for appeal. [Annual Report and Accounts 2019-20](#) (2020) Criminal Cases Review Commission.

a) 114 [The Corston Report](#) (2007) The Home Office.

115 [Joint Recommendations on the Domestic Abuse Bill \(2020\) Women's Aid Federation England.](#)

116 [A Place to Go Like This: Breaking the Cycle of Harm For Mothers Involved in Offending Who Are Victims of Domestic Abuse, and Their Children](#) (2020) Advance.

117 See CWJ's super-complaint: [CWJ launch super-complaint: police failure to use protective measures in cases involving women and girls](#) (March 2019) Centre for Women's Justice.

118 [CWJ Submission to Domestic Abuse Bill Committee 21 May 2020: The Need For an Offence of Non-fatal Strangulation](#) (2020) Centre for Women's Justice.

119 [CWJ Submission to Domestic Abuse Bill Committee 21 May 2020: The Need For an Offence of Non-fatal Strangulation](#) (2020) Centre for Women's Justice.

120 [Authorised Professional Practice – Major Investigation and Public Protection: Modern Slavery – Key Responsibilities](#) (2020) College of Policing.

121 [Authorised Professional Practice – Major Investigation and Public Protection: Modern Slavery - First Response and the National Referral Mechanism](#) (2020) College of Policing.

122 See the [Solicitors Regulation Authority website](#) for further information (police representatives accreditation scheme). See also the [recommendations made by Naima Sakande for action by the Law Society](#) (Sakande, N. (2019) [Righting Wrongs: What Are the Barriers Faced by Women Seeking to Overturn Unsafe Convictions or Unfair Sentences in the Court of Appeal](#) (Criminal Division) (2019) The Griffins Society)

123 [United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders \(the Bangkok Rules\)](#) (October 2010) United Nations General Assembly.

124 UN Convention on the Elimination of all forms of Discrimination against Women

125 Sakande, N. (2019) [Righting Wrongs: What Are the Barriers Faced by Women Seeking to Overturn Unsafe Convictions or Unfair Sentences in the Court of Appeal](#) (Criminal Division) (2019) The Griffins Society.

126 [A Place to Go Like This: Breaking the Cycle of Harm for Mothers Involved in Offending Who are Victims of Domestic Abuse, and Their Children](#) (2020) Advance. See recommendation 17, p39.

127 Minson, S. (2020) [Safeguarding children when sentencing mothers](#); Prison Reform Trust (2018) [What about me? The impact on children when mothers are involved in the criminal justice system](#)

128 Sakande, N. (2020) The Griffins Society.

129 See CWJ's [proposed amendments](#) to the Domestic Abuse Bill 2020, Centre for Women's Justice.

130 Bryman, A (2012) *Social Research Methods*, Oxford University Press.

131 In the remaining two cases, women had been implicated in a killing carried out by their abusive partner/ex-partner (see footnote 3). In two of the 18 cases, the victim was not a partner or ex-partner: one was a landlord and one a friend.

132 In one of these cases, the woman was involved in killing her ex-partner who had been abusive to her in the past. In the other two cases, women were involved in killing men known to them, but there was no evidence of previous abuse from the deceased.

133 The longer case list compiled by the research team found that: in 46% of cases (n=42), women were convicted of manslaughter; in 43% of cases (n=40), women were convicted of murder; and in 7% of cases, women were acquitted (n=6).

134 Where it is known, the defence is listed. However, a number of women were not able to confirm what their defence(s) was at the time of interview.

135 For example, Sheehy, E. (2014) *Defending Battered Women on Trial: Lessons From the Transcripts*, UBC Press.

136 [Domestic Homicide Reviews: Analysis of Key Findings](#) (2016) Home Office.

137 The CCRC was established in 1997 to investigate alleged miscarriages of justice in England, Wales and Northern Ireland. Cases were drawn from case files dating back to the CCRC's establishment.

138 Long, J., Wertans, E., Harper, K., Brennan, D., Harvey, H., Allen, R. and Elliott, K. (2020) [UK Femicides 2009–2018](#),
 Femicide Census.

139 These dates were chosen as this allowed for a direct comparison with information provided to the research team
 by the Home Office (via FOI requests).

140 This evidence was collated from information in the public domain, primarily media reports, which were then
 compared with other secondary and primary data sources – for example, domestic homicide review reports, CCRC
 reports, interviews with women, discussions with lawyers and trial observations.

141 In the remaining four cases, women were convicted of other crimes, considered unfit to stand trial, or the
 outcome is unknown.

142 In the remaining nine cases, cause of death included being shot, run over, assaulted, strangled, or the cause of
 death is unknown.

143 In the remaining two cases, the sentence is unknown.

144 In the remaining two cases, the sentence is unknown.

145 Research data includes five interviews with women, one interview with a lawyer, two CCRC case file reviews, and
 one trial observation.

146 Quotes included are from documents shared with SBS, rather than the CCRC file review conducted by the research
 team. The woman gave her consent to the use of their personal data and the researchers were aware of the case
 from a source other than CCRC files made available by the CCRC for research purposes.

147 The CCRC has limited statutory powers and can only refer cases to the Court of Appeal if there is fresh evidence
 that raises a real possibility of a conviction being overturned. The CCRC must also look into whether there is a
 reasonable explanation for a point not being previously raised at trial. Further information about CCRC decision
 making is available on the [CCRC website](#).

148 See endnote 2.

149 For example, Patel, P. (2003) ‘Shifting terrains: old struggles for new?’, in R. Gupta (ed) *From Homebreakers to
 Jailbreakers*, Zed Books.

150 For example, Patel, P. (2003) ‘Shifting terrains: old struggles for new?’, in R. Gupta (ed) *From Homebreakers to
 Jailbreakers*, Zed Books.

151 See endnote 2.

152 [The effects of domestic violence on children](#), (accessed 2020) Office on Women’s Health

153 s.2 Homicide Act, as amended by s.52 Coroners and Justice Act 2009.

154 ss.54–55 Coroners and Justice Act 2009.

155 s.2(1) Homicide Act, as amended.

156 s.2(1)(a) Homicide Act, as amended.

157 s.2(1)(b), (1A)(a)-(c) Homicide Act, as amended.

158 s.2(1B) Homicide Act, as amended.

159 s.56 Coroners and Justice Act 2009

160 *Ibid.*, ss.54–55

161 *Ibid.*, s.54(1)(a)

162 *Ibid.*, s.54(1)(b)

163 *Ibid.*, s.54(1)(c)

164 *Ibid.*, s.55(3)

165 *Ibid.*, s.55(4)(a)

166 *Ibid.*, s.55(4)(b)

167 *Ibid.*, s.55(5)

168 [Murder, Manslaughter and Infanticide](#) (2006) The Law Commission

169 s.55(c) Coroners and Justice Act 2009

170 Quick, O. and Wells, C. (2012) Partial reform of partial defences: developments in England and Wales, *Australian
 and New Zealand Journal of Criminology* 45 (3).

171 s.55(c) Coroners and Justice Act 2009

172 *R v Rejmanski* [2018] 1 Cr App R 18.

173 This is likely to be an underestimate as it was not possible to track the defences of all the women included on our
 case list due to the limited information available about some cases.

174 For example, Sheehy, E. (2014) *Defending Battered Women on Trial: Lessons From the Transcripts*, UBC Press.

175 O’Donovan, K. (1991) Defences for battered women who kill, *Journal of Law and Society* 18 (2)

176 s.76 Serious Crime Act 2015

177 *Ibid.*, s.76(1)(a)

178 *Ibid.*, s.76(1)(b)

179 *Ibid.*, s.76(1)(c)

180 *Ibid.*, s.76(1)(d)

181 *Ibid.*, s.76(2)

182 The offence is gender neutral. s76(4)(a) Serious Crime Act 2015

183 *Ibid.*, s.76 (4)(b)

184 235 of the 4,686 defendants who were prosecuted under section 76 in the year ending March 2018 were
 convicted. [Domestic Abuse in England and Wales: year ending March 2018](#) (2018) Office for National Statistics

185 Patrick Cowling (4 December 2018) [Domestic Abuse: Majority of Controlling Cases Dropped](#), BBC News, accessed
 28 June 2019.

186 Wiener, C. (2017), Seeing what is invisible in plain sight: policing coercive control, Howard Journal of Crime and
Justice, 56(4): 500–515.

187 [Joint Recommendations on the Domestic Abuse Bill \(2020\)](#) Women's Aid Federation England.

188 These proposals were developed by the Prison Reform Trust (PRT) in collaboration with CWJ and others, as part
of PRT's 'Transforming Lives' programme to reduce women's imprisonment. Since that programme ended in
November 2020, CWJ has taken over the lead on this work by agreement with PRT.

189 [CPS, Self-Defence and the Prevention of Crime](#), (updated September 2019) Crown Prosecution Service.

190 PRT conducted a short survey of criminal defence lawyers in Summer 2020 to seek their views on the adequacy of
defences available to individuals who offend due to their experience of domestic abuse, including coercion. Further
details are available from CWJ on request.

191 See PRT's recommendations in: There's a Reason We're in Trouble: Domestic Abuse as a Driver to Women's
Offending (2017) Prison Reform Trust the accompanying [briefing by the Criminal Bar Association](#) (2018) and (In)
Visibility: Female. Muslim. Imprisoned. (2018) Muslim Hands.

