



**Law  
Commission**  
Reforming the law

# **Defences for victims of domestic abuse who kill their abusers**

## **Background Paper**

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## INTRODUCTION

Most deaths that occur in the context of domestic abuse involve male abusers who kill their female victims. A much smaller number of (almost entirely female) victims of domestic abuse kill their (almost entirely male) abusers.<sup>1</sup> The Law Commission is reviewing whether the defences to the homicide offences of murder and manslaughter operate appropriately in those smaller number of cases where a victim of domestic abuse kills their abuser.<sup>2</sup>

In 2023, Clare Wade KC published her Government-commissioned review of sentencing in domestic homicide,<sup>3</sup> which focused on sentencing both in cases where the abuser has killed their victim, and where the victim of abuse has killed their abuser. Clare Wade KC also recommended further review of defences in the latter context. The Government subsequently asked the Law Commission to carry out that work. In May 2024 we launched our review of defences for victims of abuse who kill their abuser (the “defences review”). Since the defences review was announced, the Government have also asked us to look at the whole of the law of homicide, including the substantive offences of murder and manslaughter and the sentencing framework for murder (the “homicide review”).<sup>4</sup> This broader homicide review provides us with the opportunity to look more holistically at how the law should operate to deliver just outcomes for this particular group of defendants.

The Law Commission is a statutory independent body responsible for keeping the law of England and Wales under review and recommending reform where needed. We aim to ensure that the law is fair, modern, simple, and cost-effective.

In our homicide review, incorporating the defences review, we will build on our previous work. In respect of defences, in 2004, the Law Commission made recommendations for reform of the partial defences to murder including provocation (now loss of control) and diminished responsibility.<sup>5</sup> These recommendations were partially implemented by the Coroners and Justice Act 2009.<sup>6</sup> In the two decades since our recommendations, a number of high-profile cases<sup>7</sup> have highlighted ongoing concerns that the current law does not allow the context of domestic abuse to be properly considered within the criminal justice system, preventing just outcomes in these cases.

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<sup>1</sup> Much of the discourse on this topic is therefore considered “gendered”. There is a significant gender dynamic to domestic abuse, and to homicide in the context of domestic abuse. However, as the following sections of this background paper detail, the paradigm dynamic of female victims of abuse and male perpetrators of abuse who are or were intimate partners is not the only such dynamic. We outline a range of known dynamics, including where the victim and abuser were family members rather than partners, male victims, cases involving female perpetrators, and the relevance of different cultures and characteristics.

<sup>2</sup> For more information about the project, see [the project webpage](#). The [terms of reference](#) are also available on the webpage (all links in this document are correct at the time of publishing on 10 December 2024).

<sup>3</sup> C Wade, *Domestic Homicide Sentencing Review* (2023).

<sup>4</sup> For more information about the project, see the [homicide project webpage](#).

<sup>5</sup> Partial Defences to Murder Final Report (2004) Law Com No 290.

<sup>6</sup> s 52 (diminished responsibility) and ss 54 to 56 (loss of control).

<sup>7</sup> For example, Sally Challen’s conviction for murder which was overturned in 2019 on appeal (*R v Challen* [2019] EWCA Crim 916; [2019] Criminal Law Review 980) and subsequently a plea of manslaughter accepted. Farieissia Martin’s 2015 conviction for murder which was also overturned on appeal in 2020 (*R v Martin* [2020] EWCA Crim 1798) and subsequently a plea of manslaughter accepted.

In the defences review, the Law Commission will consider the current defences and how they are identified, evidenced, and used throughout the criminal justice process from police investigation and charge to trial.

We will review:

- (1) the full defence of self-defence including the householder defence (section 76 of the Criminal Justice and Immigration Act 2008);
- (2) the partial defence of loss of control (sections 54 to 56 of the Coroners and Justice Act 2009); and
- (3) the partial defence of diminished responsibility (section 2 of the Homicide Act 1957).<sup>8</sup>

We will also consider arguments that victims of abuse who kill their abuser lack the requisite intent for murder.

We want to know whether reform is needed to help ensure just outcomes in these cases. That could be reform of the current defences, a new bespoke defence, or reform to the operation of the defences during the investigation and trial process (for example, judicial directions to juries or reform of the rules of evidence to ensure that the context of domestic abuse can be properly understood by juries).

To assess the relevant law of defences, we need to understand this particular group of homicide defendants. In this background paper therefore, we set out the modern understandings of domestic abuse, and how they relate to cases where victims of abuse kill their abuser.

First, we summarise the established evidence base for domestic abuse, how it manifests, its impact on victims, how victims may react to it, and how the criminal law has responded to developments in the way it is understood. Understanding the behaviours before, during and after the homicide, including why it may have occurred, will help inform our review of the law. Defendants' culpability will be relevant to the defences that should be available to them, while how they present (for example, during the police interview) will be relevant to the rules of evidence. To take one example discussed further below, defendants who experience post-traumatic stress disorder ("PTSD") as a result of their abuse may have impaired judgment that reduces their culpability. Their memory may also be impacted, affecting how they respond to questioning upon arrest.

Secondly, we consider opportunities and barriers for victims to disclose their abuse both before a homicide, and after.<sup>9</sup> Understanding disclosure and non-disclosure can further our understanding of the impact of abuse, and the way victims of abuse experience the criminal justice system. They also greatly impact how and when defences may be raised. For example, if a defendant has not disclosed abuse to professionals before the homicide, there

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<sup>8</sup> If a "partial defence" is accepted, a defendant is not guilty of murder but guilty of manslaughter.

<sup>9</sup> In this background paper we do not explicitly address the discourse surrounding the question "why didn't they leave their abuser". In the discussion of methods of, and responses to, abuse, we highlight why many victims of abuse are unable to leave their abuser in the way some people may expect. In this section we consider the distinct matter of the victim of abuse disclosing the fact of abuse to another person.

may be limited evidence of the abuse to use at trial. If a defendant feels unable to disclose the abuse to their lawyer after arrest, they may not advance defences that are applicable. This exploration of disclosure and barriers to disclosure will also help us understand their responsibility for the killing. Disclosure can lead to support and prevention of further abuse. In some circumstances it could help prevent homicides in this context. Accordingly, some may argue that victims of abuse have a responsibility to report to limit the further harmful impacts of abuse. However, as we outline below, there are structural barriers that not only prevent disclosure, but can also limit the support available upon disclosure and the potential for prevention of further abuse. While some may place the responsibility for disclosure with the victim, it can also be argued that the state bears responsibility for protecting people from abuse, and state failures result in barriers to disclosure and support.<sup>10</sup> Therefore we approach the issue of disclosure with caution; it is not determinative of culpability but an important part of the experience of abuse and how it is reflected in the criminal justice process.

Thirdly, we outline the available data on prevalence and profiles of domestic abuse, and of homicide in the context of domestic abuse. We also highlight the lack of data on the use of defences in this context. This provides a picture of the scale of the issue and demographics of those affected, important context for reviewing the operation of law.

Finally, we briefly explain the relevance of social attitude research to this review and invite researchers to share any upcoming social attitude research that may be relevant to this defences review.

### Language and terminology

When victims of abuse respond or react to that abuse by harming the perpetrator of the abuse, the identities of victim and perpetrator can become complicated.<sup>11</sup> In this paper we use the following terminology:

- (1) Before the homicide: “perpetrator of abuse” and “victim of abuse”.
- (2) After the homicide: “defendant” (victim of abuse before the homicide) and “the deceased” (perpetrator of abuse before the homicide).

This is to reflect the factual and legal position at each distinct stage in this particular context. It is not intended to erase the impact of abuse post-homicide by moving away from the word “victim”,<sup>12</sup> instead it is to provide clarity at the stage when another person (the deceased) has become a victim of an act of violence. Where a different term is chosen, we will explain why.

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<sup>10</sup> See Centre for Women’s Justice, *Life or Death? Preventing Domestic Homicides and Suicides of Black and Minoritised Women* (2023) p 14, and J Tolmie, R Smith, J Short, D Wilson and J Sach, “Social Entrapment: A Realistic Understanding of the Criminal Offending of Primary Victims of Intimate Partner Violence” (2018) *New Zealand Law Review* 181 (“J Tolmie and others, “Social Entrapment: A Realistic Understanding of the Criminal Offending of Primary Victims of Intimate Partner Violence” (2018)”).

<sup>11</sup> This can, in some cases, reflect the complicated dynamics that may impact the way family and friends of victims and perpetrators feel after a homicide in the context of domestic abuse. Family and friends of the defendant will often know or indeed be related to, the deceased. The level of knowledge of the prior abuse may differ between individual friends and family members.

<sup>12</sup> We also recognise that some victims of abuse prefer the term “survivor” or “victim-survivor”.

As we will review how defences operate for victims of abuse who kill their abuser, we proceed on the basis that there was abuse, and that the victim of the abuse did kill the perpetrator of that abuse. This will ensure that we are reviewing the way the law works for those for whom it is intended to work in this context. Of course, in any individual case, the burden of proof will be on the prosecution to prove that the defendant committed the offence and that none of the defences raised by the defendant are made out.<sup>13</sup>

## DOMESTIC ABUSE

It is important to understand how victims may experience abuse and the impact of this abuse, in order accurately to assess the behaviours and culpability of victims who use lethal violence against their abuser following domestic abuse. This section will summarise modern understandings of domestic abuse.

Domestic abuse is a broad term that may have different meanings depending on its usage.<sup>14</sup> The terminology used has changed over time,<sup>15</sup> and debate continues over the appropriate definition of domestic abuse.<sup>16</sup> In this background paper, we use “domestic abuse” as a general term that includes abuse between intimate partners and relatives. This captures various dynamics, such as current and previous intimate partners, those with a parental relationship with the same child, and carers and recipients of care. We use “coercive control” to refer to a specific type of domestic abuse, described below, and “coercive control model” for the academic theory conceptualising some types of domestic abuse. We use “controlling or coercive behaviour” to refer to the criminal offence in section 76 of the Serious Crime Act 2015, noted below.

### Modern understandings of domestic abuse

Historically, domestic abuse was seen as a private issue to be dealt with within the family home. Although acts of physical violence were criminalised,<sup>17</sup> there was limited enforcement and prosecution of perpetrators of domestic abuse.<sup>18</sup> Domestic abuse was understood largely through psychological concepts. These theories suggested that individual personality types explained both why violence was perpetrated by abusers and why victims remained in relationships.<sup>19</sup>

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<sup>13</sup> For the defence of diminished responsibility, it is for the defence to prove that the defence is made out; Homicide Act 1957, s 2(2).

<sup>14</sup> There is a statutory definition of domestic abuse within the Domestic Abuse Act 2021, s 1. We discuss this definition below in the section on legislative reform.

<sup>15</sup> Other common terminology includes “domestic violence”, “domestic violence and abuse”, “intimate partner violence” and “family violence”.

<sup>16</sup> See for example C Wiener, *Coercive Control and the Criminal Law* (2023) p 140; J Aldridge, “‘Not an Either/or Situation’: The Minimization of Violence Against Women in United Kingdom ‘Domestic Abuse’ Policy” (2021) 27(11) *Violence Against Women* 1823.

<sup>17</sup> Including common law offences such as assault and battery, as well as non-fatal offences of assault causing actual bodily harm and grievous bodily harm under Offences Against the Person Act 1861, ss 18, 20 and 47.

<sup>18</sup> C Barlow and S Walklate, *Coercive Control* (2022) pp 41-42.

<sup>19</sup> C Houston, “How Feminist Theory Became (Criminal) Law: Tracing the Path to Mandatory Criminal Intervention in Domestic Violence Cases” (2013) 21(2) *Michigan Journal of Gender & Law* 217, 221-222.

From the 1970s onwards, the “battered women’s movement” sought to combat violence against women by strengthening criminal justice responses to domestic abuse.<sup>20</sup> Activists argued that this psychological understanding of domestic abuse encouraged victim blaming and discouraged state intervention in private family matters, rather than recognising that perpetrators of abuse have committed a serious crime.<sup>21</sup> Consequently, new theories of domestic abuse developed to counter misconceptions and more accurately describe some of the causes and effects of abuse.<sup>22</sup>

### “Battered Woman Syndrome”

In the late 1970s, Dr Lenore Walker put forward the theory of “battered woman syndrome” as a psychological explanation of the behaviours of women who are victims of domestic abuse.<sup>23</sup> She suggested that domestic abuse was perpetrated in cycles of three phases: tension building, resulting in an acute battering incident, followed by a period of “loving contrition”. Following multiple cycles, a victim would develop “learned helplessness” due to trauma from the abuse. Therefore, they would remain in the relationship notwithstanding the risk of violence, as they were psychologically incapable of making the choice to leave.

Following Dr Walker’s work, expert evidence of “battered woman syndrome” was introduced in cases where victims of abuse had killed their abusers to explain why the victim may have remained or returned to their abuser.<sup>24</sup> However, the use of “battered woman syndrome” as a theory has proved controversial. Dr Walker’s work has been criticised for its lack of scientific or evidential support in relation to both the components of cycles of violence and “learned helplessness”.<sup>25</sup> Further, critics have suggested that the theory stereotypes victims of abuse as passive and helpless, such that any behaviour that does not conform to this stereotype may be used to invalidate their status as a victim.<sup>26</sup> In addition, by focusing on the psychological impact of abuse in restraining victims’ individual capacity to act, the theory seeks to excuse the victim’s failure to make rational choices. It thereby places responsibility for ending the abuse on the individual victim.

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<sup>20</sup> C Barlow and S Walklate, *Coercive Control* (2022) pp 76-77, citing L Goodmark, *Decriminalizing domestic violence: A balanced policy approach to intimate partner violence* (2018).

<sup>21</sup> C Houston, “How Feminist Theory Became (Criminal) Law: Tracing the Path to Mandatory Criminal Intervention in Domestic Violence Cases” (2013) 21(2) *Michigan Journal of Gender & Law* 217, 222.

<sup>22</sup> For a full history of early theories of domestic abuse, see above, 227-247.

<sup>23</sup> See L Walker, “Battered women and learned helplessness” (1977) 2(3-4) *Victimology* 525; L Walker, *The Battered Women Syndrome* (1984); L Walker, *Terrifying Love: Why Battered Women Kill and How Society Responds* (1989).

<sup>24</sup> J Tolmie and others, “Social Entrapment: A Realistic Understanding of the Criminal Offending of Primary Victims of Intimate Partner Violence” (2018), 203, citing E Schneider, *Battered Women and Feminist Lawmaking* (2000).

<sup>25</sup> J Tolmie and others, “Social Entrapment: A Realistic Understanding of the Criminal Offending of Primary Victims of Intimate Partner Violence” (2018), 205.

<sup>26</sup> A O’Loughlin, K Leader, S Classmann, A King and J Mortimer, *Defendants as victims: A scoping review of vulnerability, victimhood and safeguards from charge to conviction* (2024) (“A O’Loughlin and others, *Defendants as victims* (2024)”) p 13; J Tolmie and others, “Social Entrapment: A Realistic Understanding of the Criminal Offending of Primary Victims of Intimate Partner Violence” (2018), 203-205.



## Coercive control

In contrast, proponents of the coercive control and social entrapment models suggest that these models are preferable to battered woman syndrome. This is because they focus on the coercive circumstances in which victims find themselves and the inadequacy of any safety options, rather than examining whether a victim's actions were rational or irrational.<sup>27</sup> As a conceptual framework, the coercive control model goes beyond recognising coercive control as a specific type of abuse to consider the effect of this abuse on a victim's culpability where they respond with potentially criminal conduct.<sup>28</sup>

Though coercive and controlling behaviour had previously been recognised as a feature of intimate partner violence,<sup>29</sup> Professor Evan Stark's work is most associated with the concept. Professor Stark drew together previous academic research alongside his experience as a social worker to reframe coercive control in domestic abuse as a "liberty crime". His work has formed the basis of the main understanding of domestic abuse in the UK,<sup>30</sup> and has been endorsed as a "heuristic tool" by which criminal justice decision-makers can forensically examine and understand the role and impact of such abuse in cases involving allegations of criminal offending by either party.<sup>31</sup>

Professor Stark characterised coercive control as

a malevolent course of conduct that subordinates women<sup>32</sup> to an alien will by violating their physical integrity (domestic violence), denying them respect and autonomy (intimidation), depriving them of social connectedness (isolation), and appropriating or denying them access to the resources for personhood and citizenship (control).<sup>33</sup>

Professor Stark's work on coercive control incorporates both the behaviours of the perpetrator as well as the response of the victim. Rather than focusing on physical violence to assess the severity of abuse, the model "considers the degree to which coercive control

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<sup>27</sup> J Tolmie and others, "Social Entrapment: A Realistic Understanding of the Criminal Offending of Primary Victims of Intimate Partner Violence" (2018), 204-205.

<sup>28</sup> In this section we refer to coercive control as a way of conceptualising some forms of domestic abuse, distinct from the criminal offence of controlling or coercive behaviour in the Serious Crime Act 2015, s 76. The offence is discussed below in the context of legislative reform on domestic abuse.

<sup>29</sup> See for example, S Schechter, *Women and male violence: The visions and struggles of the Battered Women's Movement* (1982); R Dobash and R Dobash, *Violence Against Wives: A Case Against the Patriarchy* (1979); and M Johnson, "Patriarchal terrorism and common couple violence: Two forms of violence against women" (1995) 57(2) *Journal of Marriage and the Family* 283.

<sup>30</sup> C Barlow and S Walklate, *Coercive Control* (2022) p 9.

<sup>31</sup> C Wade, *Domestic Homicide Sentencing Review* (2023) para 1.3.11; J Tolmie and others, "Social Entrapment: A Realistic Understanding of the Criminal Offending of Primary Victims of Intimate Partner Violence" (2018).

<sup>32</sup> Professor Stark saw coercive control as "gendered" in "its construction, delivery and consequences" in that the behaviours used to enforce power and control reflect and enforce gender stereotypes, through the micro-regulation of activities traditionally seen as women's roles. Further, he situated coercive control as emerging due to increased formal gender equality on a societal level. See E Stark, *Coercive Control: How Men Entrap Women in Personal Life* (2007) pp 129-130. We use gender-neutral language throughout the background paper to reflect the fact that not all victims of domestic abuse or coercive control are women, while recognising that women are disproportionately the victims of these types of abuse. See below for discussion of the prevalence of domestic abuse.

<sup>33</sup> E Stark, *Coercive Control: How Men Entrap Women in Personal Life* (2007) p 15.

has disabled a woman's capacity to effectively resist or escape abuse", a concept Professor Stark labelled as "entrapment".<sup>34</sup>

The coercive control model conceptualises domestic abuse not as discrete incidents of abuse, but as a pattern of behaviour that has a cumulative and compounding effect. Therefore, victims do not respond merely to an individual incident of violence, but the accumulation of abuse over time.<sup>35</sup> Different forms of abuse should be understood as specific means by which the abuser may exercise the underlying goal of coercion or control.

In the 1980s, the Domestic Abuse Intervention Project in Duluth, Minnesota created the Power and Control wheel to demonstrate how different forms of behaviour may be used collectively by an abuser to assert power and control over their partner.<sup>36</sup> It locates "power and control" at the centre of the wheel, as the aim and motivation of the perpetrator in exercising the behaviours. Specific behaviours listed as tactics include:

- (1) Using coercion and threats.
- (2) Using intimidation.
- (3) Using emotional abuse.
- (4) Using isolation.
- (5) Minimizing, denying, and blaming.
- (6) Using children.
- (7) Using male privilege.
- (8) Using economic abuse.

The wheel is outlined by an outer ring of physical and sexual violence, the threat of which serves to reinforce the other mechanisms of control within the wheel.

Professor Stark's work on coercive control demonstrates how physical violence may be used alongside other forms of abuse within the context of a coercive or controlling relationship. He has used this lens to analyse Sally Challen's history of abuse. Sally Challen killed her husband Richard in 2010 after suffering his abuse for decades.<sup>37</sup> Professor Stark noted that two instances of severe physical violence were the penultimate instances "in a pattern of

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<sup>34</sup> E Stark, "Current Controversies: Coercive Control" in C Renzetti, J Edleson & R Bergen (eds), *Sourcebook on Violence Against Women* (3rd ed 2018).

<sup>35</sup> J Tolmie and others, "Social Entrapment: A Realistic Understanding of the Criminal Offending of Primary Victims of Intimate Partner Violence" (2018), 190-191. See also Centre for Women's Justice, *Women Who Kill: how the state criminalises women we might otherwise be burying* (2021) p 31.

<sup>36</sup> E Pence and M Paymar, *Education groups for men who batter: The Duluth model* (1993). See also, <https://www.theduluthmodel.org/what-is-the-duluth-model/>.

<sup>37</sup> E Stark, "Diminished responsibility or justifiable homicide? The case of Sally Challen" in R M McPherson (ed), *Women Who Kill, Criminal Law and Domestic Abuse* (2024). See *R v Challen* [2019] EWCA Crim 916; [2019] Criminal Law Review 980.

physical abuse that established a level of terroristic fear of questioning or challenging Richard that lasted throughout the relationship”.<sup>38</sup>

Professor Stark explained that, given the level of fear instilled in Sally by these instances, Richard’s use of other forms of abuse such as lower-level physical violence, sexual assault, intimidation, economic abuse and micro-management were magnified for her.<sup>39</sup> Therefore, the “relative lack” of severe physical violence during most of their relationship did not indicate that Sally was no longer suffering abuse from Richard. Rather, “the cessation of severe violence indicated an escalation in coercive control”. Sally’s experience of coercive control is an example of Professor Stark’s view that:

the single most important characteristic of women battering is that the multiple harms [are] borne by the same person, giving abuse a cumulative effect that is far greater than the mere sum of its parts. ... a victim’s level of fear derives as much from her perception of what *could* happen as from the immediate threat by the perpetrator.<sup>40</sup>

Overall, abusers may use a wide range of behaviours to exercise coercive control over their victim. The lack of severe physical violence may be an indication that the coercive control within the relationship has increased, not decreased, with the victim having internalised a fear of violence as a punishment for non-compliance. Some of the behaviours used to exercise control may be understood as coercive only by the victim, such as certain words or gestures that may be perceived as minor or non-threatening by the outside world.<sup>41</sup>

### Different forms of domestic abuse

There has been growing recognition of modern forms of abuse, some only fully recognised more recently (such as economic abuse<sup>42</sup>) and some reflecting modern conduct (such as technology-facilitated abuse). Other newly recognised forms of abuse include “legal systems abuse”, where perpetrators may use the legal system as a means of coercing or controlling their intimate partner.<sup>43</sup> There has also been recognition of different forms of post-separation abuse,<sup>44</sup> including stalking, harassment, or legal systems abuse.<sup>45</sup>

Victims may also experience abuse differently in terms of its forms, patterns, duration, and severity. The specific forms of abuse utilised by a perpetrator may be impacted by the

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<sup>38</sup> E Stark, “Diminished responsibility or justifiable homicide? The case of Sally Challen” in R M McPherson (ed), *Women Who Kill, Criminal Law and Domestic Abuse* (2024) p 14.

<sup>39</sup> Above, pp 14 to 15.

<sup>40</sup> E Stark, *Coercive Control: How Men Entrap Women in Personal Life* (2007) p 94.

<sup>41</sup> V Bettinson, “Criminalising coercive control in domestic violence cases: should Scotland follow the path of England and Wales?” [2016] *Criminal Law Review* 165, 168.

<sup>42</sup> As defined in the Domestic Abuse Act 2021, s 3(4).

<sup>43</sup> H Douglas, “Legal systems abuse and coercive control” (2018) 18(1) *Criminology & Criminal Justice* 84. Examples of legal systems abuse include making counter-allegations and filing restraining orders against the victim of abuse or increasing the burden of litigation through unnecessary filings.

<sup>44</sup> From April 2023, the offence of controlling or coercive behaviour in the Serious Crime Act, s76 extends to post-separation conduct.

<sup>45</sup> C Humphreys and R K Thiara, “Neither justice nor protection: women’s experiences of post-separation violence” (2003) 25(3) *Journal of Social Welfare and Family Law* 195; H Douglas, “Legal systems abuse and coercive control” (2018) 18(1) *Criminology & Criminal Justice* 84.

victim's characteristics, including their culture, religion, sexuality, or disability, amongst many others. For example, victims with insecure immigration status may face threats of deportation from their abusers.<sup>46</sup> Some victims may experience so-called "honour-based" abuse which is a "culturally specific form of coercive and controlling behaviour" that "seeks to control women's behaviour as male property".<sup>47</sup> This form of abuse may involve multiple perpetrators within the family and community.<sup>48</sup> Victims with disabilities may be dependent on their abuser for assistance, and consequently be at particular risk of humiliation, sexual abuse, and financial abuse.<sup>49</sup>

The effect of this abuse may be impacted by any historic abuse experienced by the victim in previous, or other relationships.<sup>50</sup> Research suggests that a significant proportion of women who kill their abusive partner have experienced historic abuse from family members and previous partners.<sup>51</sup> Perpetrators may also target victims of previous abuse due to the vulnerability created by previous abuse.<sup>52</sup>

The different social and cultural context of individual victims' lives may also impact whether and how they disclose abuse or seek assistance from the criminal justice system to protect themselves, discussed below.

### Social entrapment

Recently, academics such as Professor Julia Tolmie have used social entrapment theory as a lens to examine culpability and criminal responsibility in instances where victims of abuse have acted in ways that could amount to criminal conduct, including where victims have killed their abuser.<sup>53</sup> There are three dimensions to the social entrapment lens:

- (1) "The social isolation, fear and coercion that the predominant aggressor's coercive and controlling behaviour creates in the victim's life".
- (2) "The indifference of powerful institutions to the victim's suffering".

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<sup>46</sup> Centre for Women's Justice, *Double Standard: Ending the unjust criminalisation of victims of violence against women and girls* (2022) p 31.

<sup>47</sup> Centre for Women's Justice, *Life or Death? Preventing Domestic Homicides and Suicides of Black and Minoritised Women* (2023) p 112.

<sup>48</sup> Above, p 111.

<sup>49</sup> V Bettinson, "Criminalising coercive control; in domestic violence cases: should Scotland follow the path of England and Wales?" [2016] *Criminal Law Review* 165, 169, citing G Hague, R Thiara, P Magowan and M Mullender, *Making the Links: Disabled Women and Domestic Violence* (2008).

<sup>50</sup> J Tolmie and others, "Social Entrapment: A Realistic Understanding of the Criminal Offending of Primary Victims of Intimate Partner Violence" (2018), 199.

<sup>51</sup> Centre for Women's Justice, *Women Who Kill: how the state criminalises women we might otherwise be burying* (2021) p 24, citing E Sheehy, J Stubbs and J Tolmie, "Securing fair outcomes for battered women charged with homicide: analysing defence lawyering in R v Falls" (2014) 38 *Melbourne Law Review* 666.

<sup>52</sup> J Tolmie and others, "Social Entrapment: A Realistic Understanding of the Criminal Offending of Primary Victims of Intimate Partner Violence" (2018), 199.

<sup>53</sup> Above, 185. Social entrapment theory was first developed by James Ptacek. See J Ptacek, *Battered Women in the Courtroom: The Power of Judicial Responses* (1999).

- (3) “The exacerbation of coercive control by the structural inequities associated with gender, class, race and disability”.<sup>54</sup>

Social entrapment theory builds on Professor Stark’s view that coercive control results in entrapment constraining the victim’s capacity to escape abuse. Further, it considers broader social and systemic barriers that exacerbate this entrapment. Professor Tolmie and others suggest that this framework is therefore a better way of understanding both intimate partner violence and the victim’s behaviour and responses to this violence.<sup>55</sup> Professor Tolmie and others’ analysis focuses on New Zealand, critiquing failures in state responses to domestic abuse that have led to victims of abuse killing their abuser. However, research from England and Wales has identified similar concerns in cases where women have killed their abusive partners.<sup>56</sup>

### Effect of domestic abuse

Victims of domestic abuse experience serious harm as a result of this abuse. Physical violence can cause significant injury. This can include actual and grievous bodily harm including neurological harm from instances of non-fatal strangulation.<sup>57</sup> In some cases, the perpetrator’s use of physical violence will escalate such that they kill their victim. Victims of domestic abuse may also die by suicide due to the abuse, with research suggesting that women subject to domestic violence and/or abuse were five times more likely to attempt suicide than those not subject to such abuse.<sup>58</sup>

Beyond physical harm, victims of abuse may suffer significant psychological effects. As described above, where abuse takes the form of coercive control, victims are left in a constant state of fear of future harm if they do not comply with the perpetrator’s demands.<sup>59</sup> Many victims of abuse experience significant trauma, leading to symptoms that may manifest as PTSD or complex PTSD.<sup>60</sup> Victims of abuse may also suffer from substance dependency or misuse as a response to this trauma.<sup>61</sup>

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<sup>54</sup> J Tolmie and others, “Social Entrapment: A Realistic Understanding of the Criminal Offending of Primary Victims of Intimate Partner Violence” (2018), 185.

<sup>55</sup> Above.

<sup>56</sup> Centre for Women’s Justice, *Women Who Kill: how the state criminalises women we might otherwise be burying* (2021) p 24, citing C Bishop, “Domestic violence: the limitations of a legal response” in S Hilda and V Bettinson (eds), *Interdisciplinary Perspectives on Protection, Prevention and Intervention* (2016); M Hester, “Making it through the criminal justice system: attrition and domestic violence” (2006) 5(1) *Social Policy and Society* 79.

<sup>57</sup> P Ahluwalia, C Wade KC and H Wistrich, “A practitioners’ guide to representing women who kill following domestic abuse” in R McPherson, *Women Who Kill, Criminal Law and Domestic Abuse* (2024) pp 159-160. See also H Bichard, C Byrne, C Saville and R Coetzer, “The neuropsychological outcomes of non-fatal strangulation in domestic and sexual violence: A systematic review” (2022) 32(6) *Neuropsychological Rehabilitation* 1164.

<sup>58</sup> E Stark and A Flintcraft, *Women at Risk: Domestic Violence and Women’s Health* (1996) pp 99-121.

<sup>59</sup> C Wiener, *Coercive Control and the Criminal Law* (2023) p 26.

<sup>60</sup> J Herman, *Trauma and Recovery: From Domestic Abuse to Political Terror* (1992).

<sup>61</sup> Centre for Women’s Justice, *Women Who Kill: how the state criminalises women we might otherwise be burying* (2021) p 81, citing L Gezinski, K Gonzalez-Pons and M Rogers, “Substance Use as a Coping Strategy for Survivors of Intimate Partner Violence: Implications for Safety and Service Accessibility” (2019) *Violence Against Women* 1267.

Domestic abuse also has wider social and economic impacts on victims. As a result of economic abuse, victims may experience financial hardship which can then be a barrier to escaping the abuse. The abuse may impact a victim's employment, if the perpetrator of abuse seeks to sabotage the victim's employment status as a means of increasing control. Where victims leave their home and seek refuge to escape abuse, they may face issues with housing and become homeless.<sup>62</sup>

## Responses to abuse

As noted above, coercive control may result in entrapment, where the capacity of the victim to escape the abuse or assert their autonomy is eroded. A common misconception of responses to domestic abuse is that "real" victims of abuse would not remain in the relationship.<sup>63</sup> However, there are many reasons why leaving the relationship may not be possible. The end of the relationship can often be the most dangerous time for victims, increasing the risk of post-separation abuse or homicide.<sup>64</sup> Victims with children may remain in a relationship with their perpetrator if separation would involve leaving their children exposed to abuse.

Rather, victims of abuse respond with various strategies to protect themselves. This can include compliance with the perpetrator's coercion and threats or seeking to placate the perpetrator. Others may seek help and protection from others, including from friends or family or by calling the police or seeking protective orders. The protective strategies available to victims may be dictated by their social, cultural, or economic background.<sup>65</sup>

Victims of abuse may respond with violent resistance towards their abuser. Research suggests that victims of coercive control are more likely to use physical violence to protect themselves from further abuse, compared to victims of abuse who did not experience coercive control.<sup>66</sup> The concept of violent resistance was identified by Professor Michael Johnson in his typology of violence. He defined violent resistance as a response to what he called "intimate terrorism", where victims of abuse react violently towards their coercive and controlling partner to stop the abuse. He suggested that violent resistance is a common response by victims of abuse, alongside other responses such as compliance or help-seeking, with violent resistance being present in around two-thirds of cases of heterosexual intimate terrorism.<sup>67</sup>

Further research has supported Professor Johnson's view that most women who use violence do so as violent resistance to the abuse they have suffered, rather than as a means

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<sup>62</sup> Women's Aid, *Experiences of financial hardship whilst seeking a refuge space* (2022).

<sup>63</sup> See Crown Prosecution Service ("CPS"), [Domestic Abuse](#) (5 December 2022); and Women's Aid, [Myths about domestic abuse](#).

<sup>64</sup> See J Monckton-Smith, "Intimate Partner Femicide: using Foucauldian analysis to track an eight stage relationship progression to homicide" (2019) 26 *Violence Against Women* 1552.

<sup>65</sup> S Hamby, *Battered Women's Protective Strategies* (2009).

<sup>66</sup> M E Dichter, K A Thomas, P Chrits-Christoph, S N Ogden and K V Rhodes, "Coercive control in intimate partner violence: Relationship with women's experiences of violence, use of violence, and danger" (2018) 8 *Psychology of Violence* 596.

<sup>67</sup> M P Johnson, "A Personal Social History of a Typology of Intimate Partner Violence" (2017) 9(2) *Journal of Family Theory & Review* 150, 158.



of exercising coercive control as the primary perpetrator.<sup>68</sup> However, concerns have also been raised that police officers fail to identify the primary perpetrator of abuse, with women three times more likely than men to be arrested when police officers respond to domestic abuse incidents.<sup>69</sup> Where the police fail to identify the primary victim, this not only leaves them unprotected from the abuse, but may serve as a barrier to them seeking help from the authorities in future.<sup>70</sup>

Violent resistance is just one type of conduct that could potentially lead to the criminalisation of victims of abuse. There is a growing body of research that suggests victims of abuse may carry out a wide range of potentially criminal conduct due to their abuse. This can include, for example, committing criminal offences such as fraud, theft, or possession of drugs and weapons under coercion or duress from the abuser, or “failing to protect” children from abuse.<sup>71</sup>

## Legislative reform

Domestic abuse has been a key policy issue for successive UK governments.<sup>72</sup> Commitments to tackle domestic abuse have resulted in several legislative reforms, including the introduction of the offence of controlling or coercive behaviour in an intimate or family relationship in the Serious Crime Act 2015, and a statutory definition of domestic abuse in the Domestic Abuse Act 2021. These reforms sought to respond to criticisms that the substantive criminal law failed to capture accurately the harms and patterns of domestic abuse, with the traditional emphasis of offences on discrete incidents, usually of physical violence.<sup>73</sup>

## Definitions of domestic abuse

In 2012, the Home Office issued a “New Cross-Governmental Definition of Domestic Violence” for England and Wales. The definition was informed by the work of Professor Stark,<sup>74</sup> and explicitly identified coercive control as a form of abuse.<sup>75</sup> This definition replaced

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<sup>68</sup> See for example, M Hester, “Portrayal of Women as intimate partner domestic violence perpetrators” (2012) 18(9) *Violence Against Women* 1067; M Hester, C Jones, E Williamson, E Fahmy and G Feder, “Is it coercive controlling violence? A cross-sectional domestic violence and abuse survey of men attending general practice in England” (2017) 7(3) *Psychology of Violence* 417.

<sup>69</sup> M Hester, “Portrayal of Women as intimate partner domestic violence perpetrators” (2012) 18(9) *Violence Against Women* 1067.

<sup>70</sup> Centre for Women’s Justice, *Double Standard: Ending the unjust criminalisation of victims of violence against women and girls* (2022) p 43.

<sup>71</sup> See for example, J Tolmie and others, “Social Entrapment: A Realistic Understanding of the Criminal Offending of Primary Victims of Intimate Partner Violence” (2018), 182-183.

<sup>72</sup> See Home Office, *Strengthening the Law on Domestic Abuse – A Consultation* (2014); HM Government, *Tackling Violence Against Women and Girls* (2021); HM Government, *Tackling Domestic Abuse Action Plan* (2022); King’s Speech - [The King’s Speech 2024 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/speeches/the-king-s-speech-2024).

<sup>73</sup> V Bettinson, “Criminalising coercive control in domestic violence cases: should Scotland follow the path of England and Wales?” [2016] *Criminal Law Review* 165, 169, 177. Existing offences that are used in the prosecution of domestic abuse include offences under the Offences Against the Person Act 1861, the Protection from Harassment Act 1997 and the Sexual Offences Act 2003.

<sup>74</sup> C Wiener, *Coercive Control and the Criminal Law* (2023) p xiii.

<sup>75</sup> Home Office, *Cross-Government Definition of Domestic Violence – A Consultation: Summary of Responses* (2012) p 19.

previous conflicting definitions and aimed to ensure consistency between statutory and government bodies when dealing with domestic abuse.

In 2021, section 1 of the Domestic Abuse Act (“DAA”) created a statutory definition of domestic abuse. The definition applies where A and B are aged 16 or over and are “personally connected”, such as current or former intimate partners or relatives, amongst others.<sup>76</sup> Children who are related to A or B and see, hear or experiences the effect of the domestic abuse fall within the definition of victims of abuse under the Act.<sup>77</sup>

Behaviour is considered domestic abuse if it is “abusive”, whether it is a single incident or a course of conduct.<sup>78</sup> The DAA lists the following behaviours as “abusive”:

- (1) Physical or sexual abuse.
- (2) Violent or threatening behaviour.
- (3) Controlling or coercive behaviour.
- (4) Economic abuse.
- (5) Psychological, emotional or other abuse.<sup>79</sup>

The separation of these behaviours as discrete forms of abuse has been criticised for failing to capture the nature of domestic abuse as a pattern or accumulation of behaviours underpinned by coercive control.<sup>80</sup> This fragmentation may exacerbate confusion over whether physical or sexual violence should be conceptualised and charged under the existing separate offences, rather than the controlling or coercive behaviour offence (discussed below).<sup>81</sup> Others have suggested that it creates a “hierarchy of harm” for police and prosecutors, with physical violence prioritised in assessing the existence and severity of domestic abuse.<sup>82</sup>

### Offence of controlling or coercive behaviour

Section 76 of the Serious Crime Act 2015 introduced a criminal offence of controlling or coercive behaviour in an intimate or family relationship. As amended by the DAA, both current and former intimate partners, and relatives as individuals who are “personally connected”, are within scope of the offence.<sup>83</sup> The controlling or coercive behaviour by one person (“A”) towards another (“B”) must have had a “serious effect” either by: causing B to fear “on at least two occasions” that violence will be used against them, or by causing B “serious alarm or distress which has a substantial adverse effect on B’s usual day-to-day

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<sup>76</sup> Domestic Abuse Act 2021, s 1(2)(a), s 2(1).

<sup>77</sup> Domestic Abuse Act 2021, s 3.

<sup>78</sup> Domestic Abuse Act 2021, s 1(3).

<sup>79</sup> Domestic Abuse Act 2021, s 1(3).

<sup>80</sup> C Wiener, *Coercive Control and the Criminal Law* (2023) pp 151 to 152.

<sup>81</sup> Above, p 137.

<sup>82</sup> A O’Loughlin and others, *Defendants as victims* (2024) p 12, citing C Bishop, “Domestic Violence: The Limitations of a Legal Response” in S Hilder and V Bettinson (eds) *Domestic Violence* (2016).

<sup>83</sup> Serious Crime Act 2015, ss 76(1)(b), (6).



activities”.<sup>84</sup> A must also have known or ought to have known that their behaviour would have a “serious effect” on B.<sup>85</sup>

The Home Office statutory guidance on the offence of controlling or coercive behaviour sets out a range of controlling behaviours, providing various examples under the following categories:

- (1) Physical and sexual violence/abuse and violent behaviour.
- (2) Emotional and psychological abuse.
- (3) Controlling behaviours.
- (4) Restrictive behaviours.
- (5) Threatening behaviours.<sup>86</sup>

Examples given in the guidance reflect modern understandings of the different forms of abuse, such as economic abuse<sup>87</sup> and technology-facilitated abuse.

The offence was therefore intended to reflect modern understandings of coercive control as underpinning much domestic abuse as well as modern ways of perpetrating abuse. However, the offence has been criticised for fragmenting behaviours, conflating coercive control with psychological abuse, and therefore failing to capture fully the conduct and harm of coercive control.<sup>88</sup>

## Gender

Domestic abuse is accepted as a form of gender-based violence in that it disproportionately affects women and is disproportionately perpetrated by men.<sup>89</sup> Some theorists see domestic abuse as a gendered phenomenon in both its effect and operation. For example, Professor Stark saw coercive control as a form of violence against women that specifically aimed to enforce gender stereotypes and reinforce gender inequality.<sup>90</sup> Consequently, there has been criticism of definitions of domestic abuse that are gender neutral.<sup>91</sup>

There is research that suggests women often use violence in self-defence or violent resistance, and that women and men experience physical violence and coercive control

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<sup>84</sup> Serious Crime Act 2015, s 76(4).

<sup>85</sup> Serious Crime Act 2015, s 76(1)(d).

<sup>86</sup> Home Office, [Controlling or Coercive Behaviour Statutory Guidance Framework](#) (April 2023) pp 15 to 16.

<sup>87</sup> As defined in the Domestic Abuse Act 2021, s 3(4).

<sup>88</sup> C Wiener, *Coercive Control and the Criminal Law* (2023) pp 132 to 138.

<sup>89</sup> A O’Loughlin and others, *Defendants as victims* (2024) pp 14 to 15.

<sup>90</sup> C Wade, *Domestic Homicide Sentencing Review* (2023) para 1.3.11, citing J Monckton-Smith, *Murder, Gender and the Media* (2012) p 138.

<sup>91</sup> J Aldridge, “‘Not an Either/or Situation’: The Minimization of Violence Against Women in United Kingdom ‘Domestic Abuse’ Policy” (2021) 27(11) *Violence Against Women* 1823. Scotland has taken a gendered approach to domestic abuse policy, leading some to describe this approach as the “gold standard”; see M Scott, “The making of the new ‘gold standard’: The Domestic Abuse (Scotland) Act 2018” in M McMahon and P McGorrey (eds) *Criminalising coercive control: Family violence and the criminal law* (2020).

differently.<sup>92</sup> However, there is also evidence that some women may be the primary aggressor.<sup>93</sup> Further, most research on domestic abuse has focused on women who are victims of abuse perpetrated by their male intimate partner.<sup>94</sup> Consequently, less attention may be paid to the specific issues and forms of abuse experienced by victims of other genders and sexualities. The range of research currently available demonstrates that domestic abuse may be experienced and perpetrated by individuals of any gender or sexuality, even if there may be differences in how abuse is experienced based on these characteristics.<sup>95</sup>

## Homicide

As a perpetrator's abusive behaviour towards a victim increases, the "worst case" outcome for the relationship is either suicide or homicide.<sup>96</sup> In the context of intimate partner femicide, Professor Jane Monckton-Smith developed an eight-stage timeline of the progression to the homicide.<sup>97</sup> She concluded that the presence of coercive control is crucial to assessing the risk of homicide. There is also evidence to suggest that most murders of women by their male partners are committed at the end of the relationship, after the relationship has ended, or when the victim has decided to leave the relationship. This evidence supports Professor Monckton-Smith's view that there is a "change of thinking" from the perpetrator's need to exert control over their partner, to a decision to kill once control cannot be maintained.<sup>98</sup>

In the context of victims of abuse who kill their abusers, there is no equivalent timeline. Based on their quantitative and qualitative research into cases where women have killed their male partners, the Centre for Women's Justice has suggested that many of the same steps of Professor Monckton-Smith's timeline are present in instances where women kill. However, "the escalation of violence and coercion comes from the eventual victim of the homicide", with "the culmination of increasing coercive control of the female partner" leading her "ultimately, to kill the perpetrator, rather than be killed by him".<sup>99</sup> In the Domestic Homicide Sentencing Review, Clare Wade KC also concluded that "women who have suffered domestic abuse in a relationship which is governed by coercive control are likely to kill because the coercive control had led to such a degree of entrapment that they can see no other or lawful way out of [their] situation".<sup>100</sup>

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<sup>92</sup> M Hester, C Jones and E Williamson, "Is it Coercive Controlling Violence? A Cross-sectional Domestic Violence and Abuse Survey of Men Attending General Practice in England and Wales" (2017) 17 *Psychology of Violence* 417.

<sup>93</sup> A O'Loughlin and others, *Defendants as victims* (2024) pp 14 to 15.

<sup>94</sup> Above, p 15.

<sup>95</sup> Above, pp 14 to 15.

<sup>96</sup> C Wade, *Domestic Homicide Sentencing Review* (2023) para 5.2.7.

<sup>97</sup> J Monckton-Smith, "Intimate Partner Femicide: using Foucauldian analysis to track an eight stage relationship progression to homicide" (2019) 26 *Violence Against Women* 1552.

<sup>98</sup> C Wade, *Domestic Homicide Sentencing Review* (2023) para 5.3.8.

<sup>99</sup> Centre for Women's Justice, *Women Who Kill: how the state criminalises women we might otherwise be burying* (2021) p 32.

<sup>100</sup> C Wade, *Domestic Homicide Sentencing Review* (2023) para 5.3.1.

## DISCLOSURE AND BARRIERS TO DISCLOSURE

Disclosure of domestic abuse is relevant in various ways to our defences review. Understanding disclosure and non-disclosure of abuse can further our understanding of the forms and effect of abuse. Examining the opportunities and barriers to disclosure of abuse provides a lens to consider the way in which victims of abuse experience the criminal justice system both before and after the homicide.

When victims of domestic abuse are able to disclose the abuse prior to the homicide, there is an opportunity to prevent further abuse or minimise its impact through protective measures. Homicides in this context often occur after a long history of abuse. Early intervention could help prevent such homicides from occurring.

Where a homicide has occurred, evidence of abuse from disclosure prior to the homicide may provide important context, including in support of any defences raised at trial. Disclosure of abuse following the homicide can ensure that the background of domestic abuse can be considered throughout the trial process, such as in charging decisions, pleas, defences, and safeguards including special measures.<sup>101</sup> However, there can be significant barriers to disclosure of domestic abuse by victims, both prior to and following a homicide. This may impact the defences that are raised at trial or evidence sought to be adduced.

Disclosure of abuse is not the only source of evidence of abuse. Evidence of potential abuse may be found in professional records such as medical or social services notes, or friends or family members may have witnessed and recognised the abuse without the victim disclosing this. However, whether a victim disclosed abuse is often a significant issue in challenging the victim of abuse's credibility at trial.<sup>102</sup> Therefore, without a proper understanding of the barriers to disclosure, there is a risk that those within the criminal justice system may perpetuate myths and misconceptions of domestic abuse.

### Disclosure of abuse prior to the homicide

For those who feel able and ready, there are various ways in which a victim of domestic abuse may disclose that they are experiencing domestic abuse. Some victims will disclose abuse through reporting to the police or other criminal justice professionals. Others may not seek help from law enforcement but will report abuse to specialist domestic abuse support services such as helplines or shelters.

Domestic abuse may also be disclosed to legal professionals in relation to proceedings other than criminal proceedings, such as proceedings in relation to housing, divorce, and child arrangements. Victims may also disclose abuse to other professionals with whom they interact (for example medical professionals, their employers, and staff at their children's

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<sup>101</sup> Where a victim of domestic abuse gives evidence at trial, they may be eligible for measures to assist them to give their best evidence, such as giving evidence behind a screen or over live link. If they give evidence as the complainant of a domestic abuse offence in a prosecution for that offence, they are automatically eligible for standard special measures under the Youth Justice and Criminal Evidence Act 1999, s 17. The statutory special measures scheme for witnesses in the Youth Justice and Criminal Evidence Act 1999 does not apply to defendants. Where a victim of domestic abuse gives evidence as a defendant, the court may order the use of a live link under the Criminal Justice Act 2003, s 51. The court may also appoint an intermediary under its inherent powers where this is required for the defendant to participate effectively.

<sup>102</sup> Centre for Women's Justice, *Women Who Kill: how the state criminalises women we might otherwise be burying* (2021) p 29; A O'Loughlin and others, *Defendants as victims* (2024) p 12.

school). Some professionals have training on recognising signs of domestic abuse, and may themselves prompt a disclosure, in other cases it may be that the victim feels able to disclose to such professionals without a prompt. Victims may also disclose abuse to friends, family members, colleagues, or members of their community.

The opportunities that are available for victims to disclose will depend on their individual circumstances. Where victims do disclose abuse, this disclosure may be full, or victims may only feel able to disclose some level, or certain types of abuse that they have faced. For example, victims may be able to disclose physical violence but not feel able to disclose sexual violence until later (or not at all).<sup>103</sup> Research suggests that it is common for disclosure of abuse (if there is any) to be much later than the first incident of abuse. Victims of abuse who have killed their abuser may not disclose the abuse until after the homicide or after conviction, if at all.<sup>104</sup>

### Barriers to disclosure of abuse

Victims of domestic abuse may face significant barriers to disclosing that abuse throughout its duration, and after it has ended. The nature of the abuse itself can be a barrier. For example, coercive control can operate in a way that prevents victims realising they are victims. Professor Stark has described how victims of coercive control internalise the rules and tactics of the perpetrator as a survival strategy.<sup>105</sup> The victim may then appear complicit in the abuse or perceive that any violence from the perpetrator is their own fault, or is justified in some way.<sup>106</sup>

Similarly, isolation is commonly deployed as a tool of abuse to increase the victim's reliance on the perpetrator as well as reducing their opportunities or abilities to seek help or disclose abuse. As noted earlier, attempts to leave a relationship may increase the risk of physical violence and abuse faced by the victim. Victims may not report or disclose abuse due to well-founded fears of retaliatory violence from the perpetrator.<sup>107</sup>

Opportunities and barriers to disclosure may differ for each individual and will be impacted by their background and characteristics. Some may face additional or specific social or cultural barriers. There is research describing the barriers to disclosure that may be faced by victims of abuse from minoritised backgrounds.<sup>108</sup>

Pragna Patel, former director of Southall Black Sisters, has described the barriers to disclosure for women from minoritised backgrounds as being both “internal” and

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<sup>103</sup> Centre for Women's Justice, *Women Who Kill: how the state criminalises women we might otherwise be burying* (2021) pp 121 to 122, giving an example of a case where the victim disclosed some abuse in the defence statement but did not disclose sexual abuse until the trial.

<sup>104</sup> Above, p 54.

<sup>105</sup> C Wade, *Domestic Homicide Sentencing Review* (2023) para 6.3.7, citing E Stark, *Coercive Control: How Men Entrap Women in Personal Life* (2007) p 336.

<sup>106</sup> C Wade, *Domestic Homicide Sentencing Review* (2023) para 1.4.17.

<sup>107</sup> Centre for Women's Justice, *Women Who Kill: how the state criminalises women we might otherwise be burying* (2021) p 26, citing C Humphreys and R Thiara, “Neither justice nor protection: women's experiences of post-separation violence” (2003) 25(3) *Journal of Social Welfare and Family Law* 195.

<sup>108</sup> O Femi-Ajao, S Kendal and K Lovell, “A Qualitative Systematic Review of Published Work on Disclosure and Help-Seeking for Domestic Violence and Abuse among Women from Ethnic Minority Populations in the UK” (2018) 25(5) *Ethnicity & Health* 732.

“external”.<sup>109</sup> Internal barriers to disclosure may include community dynamics and cultural and religious constraints on disclosing abuse, such as concepts of “honour” and “shame”.<sup>110</sup> For example, some victims may not disclose abuse for fear that the disclosure may impact the treatment of others connected to them, such as their children or extended family.<sup>111</sup> For some forms of abuse such as so-called “honour-based” violence, victims may fear retaliatory violence towards themselves from the wider community.<sup>112</sup>

External barriers to disclosure of abuse may include institutional responses to abuse, the legal status of the victim, or the broader consequences of engaging with state agencies. Victims who come from communities who have experienced oppression or over-policing may distrust and fear reporting abuse to the police.<sup>113</sup> Similarly, Jewish Women’s Aid have noted that Jewish women find it difficult to disclose abuse to those outside the Jewish community for fear of bringing shame to their community, bringing their religion into disrepute, or fear of experiencing antisemitism when they do report. Where abuse has been disclosed or is suspected, a lack of cultural understanding can also lead to non-intervention or “under-policing” of abuse in certain communities.<sup>114</sup>

Whether victims have the opportunity to disclose to external agencies will depend on their personal circumstances and background. For example, Pragna Patel has described how some women in South Asian communities live a life of “purdah” in which they remain within the home and domestic sphere. These women may be accompanied in all interactions with the outside world, such as medical appointments, limiting the opportunities for disclosure.<sup>115</sup>

The Centre for Women’s Justice has described the “feedback loop” between state responses to abuse and barriers to disclosure. Victims may be reluctant to report abuse for fear they will not be taken seriously, with this fear reinforced and exacerbated when state agencies fail to respond appropriately to reports of abuse.<sup>116</sup> As noted above, there is evidence that police officers sometimes misidentify the primary victim when they respond to incidents, suggesting a lack of understanding of the dynamics of domestic abuse at the point of disclosure. There has also been criticism that police and prosecutors take an incident-based approach to domestic abuse and can fail to identify controlling or coercive behaviour which spans

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<sup>109</sup> Centre for Women’s Justice, *Double Standard: Ending the unjust criminalisation of victims of violence against women and girls* (2022) pp 28 to 29.

<sup>110</sup> Above, p 28.

<sup>111</sup> Centre for Women’s Justice, *Women Who Kill: how the state criminalises women we might otherwise be burying* (2021) p 122.

<sup>112</sup> C Wade, *Domestic Homicide Sentencing Review* (2023) para 1.4.17. See also Centre for Women’s Justice, *Life or Death? Preventing Domestic Homicides and Suicides of Black and Minoritised Women* (2023) p 111.

<sup>113</sup> Centre for Women’s Justice, *Women Who Kill: how the state criminalises women we might otherwise be burying* (2021) pp 28, 128; Centre for Women’s Justice, *Double Standard: Ending the unjust criminalisation of victims of violence against women and girls* (2022) pp 28 to 29.

<sup>114</sup> Centre for Women’s Justice, *Double Standard: Ending the unjust criminalisation of victims of violence against women and girls* (2022) p 29.

<sup>115</sup> Centre for Women’s Justice, *Women Who Kill: how the state criminalises women we might otherwise be burying* (2021) pp 120 to 123.

<sup>116</sup> Centre for Women’s Justice, *Life or Death? Preventing Domestic Homicides and Suicides of Black and Minoritised Women* (2023) p 10.

multiple individual incidents.<sup>117</sup> If the police or other agencies fail to respond effectively, victims may disengage from proceedings or not disclose further abuse.<sup>118</sup>

Victims may not disclose abuse to authorities for fear of the consequences of any disclosure. Where victims have insecure immigration status, they may fear information sharing between the police and immigration agencies that could lead to their deportation.<sup>119</sup> If the victim of abuse has children, they may fear that disclosure could lead to social services' involvement or the removal of their children from their care.<sup>120</sup> Victims may not call the police or report abuse due to fear of being misidentified as the perpetrator of abuse due to stereotypes of who may be a victim of abuse. This can be a particular concern for male victims, who may not call the police for assistance for fear they will be perceived as the primary aggressor or as making counter-allegations.<sup>121</sup>

### Disclosure of abuse following the homicide

There are some opportunities and barriers to disclosing abuse specific to cases where a victim of abuse has killed their abuser. Following such a homicide, there may be further opportunities for disclosure at every stage of the criminal justice system. However, there are also significant barriers to disclosure at each of these stages.

After a victim of abuse has killed their abuser, they may call for emergency assistance themselves, or others nearby may call the police on discovering the death. If the victim of abuse is arrested at the scene of the crime and taken into police custody, they may require medical treatment or be assessed by the custody sergeant. As a defendant, they may be held in custody for up to 24 hours, during which the police will investigate and gather further evidence to determine whether to charge them.<sup>122</sup> They have the right to receive legal advice, either from a solicitor of their choosing or from the duty solicitor. The solicitor will take instructions and advise them prior to the police interview.

Therefore, there are several individuals to whom the defendant may disclose abuse in the immediate aftermath of the homicide: the police on arrest or at the police station, the custody sergeant or any medical examiner, their solicitor or the police officers conducting the interview.

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<sup>117</sup> A O'Loughlin and others, *Defendants as victims* (2024) pp 17-18, citing V Munro, V Bettinson and M Burton, "Coercion, Control and Criminal Responsibility: Exploring Professional Responses to Offending and Suicidality in the context of Domestically Abusive Relationships" (2024) 33(3) *Social and Legal Studies* 392.

<sup>118</sup> Centre for Women's Justice, *Life or Death? Preventing Domestic Homicides and Suicides of Black and Minoritised Women* (2023) p 14.

<sup>119</sup> P Dudhia, *Will I Ever Be Safe? Asylum-seeking Women Made Destitute in the UK* (2003) p 4.

<sup>120</sup> S Walklate and K Fitz-Gibbon, "The criminalisation of coercive control: The power of law?" (2019) 8(4) *International Journal for Crime, Justice and Social Democracy* 94; S Walklate and K Fitz-Gibbon, "Why Criminalise Coercive Control? The Complicity of the Criminal Law in Punishing Women Through Furthering the Power of the State" (2021) 10(4) *International Journal for Crime, Justice and Social Democracy* 1.

<sup>121</sup> A O'Loughlin and others, *Defendants as victims* (2024) p 17, citing B Hine, E Bates and S Wallace, "I Have Guys Call Me and Say 'I Can't Be the Victim of Domestic Abuse': Exploring the Experiences of Telephone Support Providers for Male Victims of Domestic Violence and Abuse" (2022) 27(7-8) *Journal of Interpersonal Violence* NP5594.

<sup>122</sup> Police and Criminal Evidence Act 1984, s 41 provides that a suspect should not be held in police custody for longer than 24 hours. For serious crimes such as homicide, this may be extended to between 36 and 96 hours with the approval of a magistrates' court: Police and Criminal Evidence Act 1984, ss 42 and 43.

However, disclosure of abuse may not be possible in these brief interactions during the time immediately following the homicide. Where victims of abuse have killed their abuser, the trauma of the homicide as well as the abuse that preceded the killing may result in complex trauma responses, including traumatic amnesia or dissociation.<sup>123</sup> This may impact the ability of the victim as a defendant to disclose abuse or the details of the homicide, with a subsequent impact on any defence to be advanced at trial.

For those same reasons, or for others,<sup>124</sup> they may deny responsibility for the killing. They may also feel conflicting emotions following the homicide, such as guilt and remorse, and may not wish to disclose the full background of abuse.<sup>125</sup> This may be a particular concern if they have been advised that disparaging the character of the deceased will have a negative impact on their defence.<sup>126</sup>

Following this time in police custody, the police will either charge the defendant with a homicide offence or release them under investigation. If charged with murder, a defendant is unlikely to be granted bail and will be held in custody in prison until trial.<sup>127</sup>

There may be other opportunities for disclosure following charge. The defendant will continue to meet with their legal representatives during this time. The defence will need to produce a defence statement, containing a general overview of the defence case. This will require the solicitor to engage with the defendant to take instructions for the defence case and determine any defences to be run.

The defendant may disclose the abuse they have suffered to the solicitor during these meetings. However, there may not be sufficient time to build the trust needed for full disclosure.<sup>128</sup> There may be further barriers to disclosure if legal representatives do not have sufficient understanding of domestic abuse to recognise signs of abuse or to support a disclosure.

In some cases, the prosecution or defence may seek to admit expert evidence from a psychiatrist or psychologist. The defendant may disclose their history of abuse and the impact of this abuse during meetings with these medical professionals. However, not all experts will have sufficient understanding of domestic abuse. Where an instructed psychiatrist or psychologist does not consider the impact of domestic abuse in their assessment, this may act as a barrier to disclosure from the defendant.

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<sup>123</sup> Centre for Women's Justice, *Women Who Kill: how the state criminalises women we might otherwise be burying* (2021) pp 33, 73. P Ahluwalia, C Wade KC and H Wistrich, "A practitioners' guide to representing women who kill following domestic abuse" in R McPherson, *Women Who Kill, Criminal Law and Domestic Abuse* (2024) pp 154, 157.

<sup>124</sup> For example, fear of losing custody of their children or a desire to avoid police involvement or custody.

<sup>125</sup> Centre for Women's Justice, *Women Who Kill: how the state criminalises women we might otherwise be burying* (2021) p 56.

<sup>126</sup> Above.

<sup>127</sup> P Ahluwalia, C Wade KC and H Wistrich, "A practitioners' guide to representing women who kill following domestic abuse" in R McPherson, *Women Who Kill, Criminal Law and Domestic Abuse* (2024) p 153.

<sup>128</sup> The defence statement must be provided within 28 days from initial disclosure by the prosecution, though an extension may be granted. See above, pp 154 to 155.



There may be additional barriers to disclosure depending on the defendant's personal circumstances and background. Pragna Patel has described how women from South Asian communities who have killed their abusers may have representation appointed for them by their families. In some cases, this representation has been male lawyers from their community, without criminal law experience or understanding of domestic abuse, hindering both disclosure of abuse and the effective use of defences.<sup>129</sup>

Where defendants do not speak English, they may be unable to make proper disclosures of abuse through an interpreter. For example, the defendant may be unable to disclose if the interpreter is male, from the same local community as the deceased, does not understand the dynamics of domestic abuse, or is not familiar with the specific dialect of the victim.<sup>130</sup>

It can be common for victims of domestic abuse who kill their abuser not to disclose the abuse until after conviction; some may do so only after they are sentenced or imprisoned.<sup>131</sup> This may be through sharing experiences with other prisoners who have experienced abuse, given the high prevalence of women in prison with histories of domestic abuse.<sup>132</sup> Victims may also participate in programmes in prison such as the Freedom Programme which help them to understand and recognise their experience as abuse.<sup>133</sup> Following release from prison, victims may disclose abuse to probation services or to specialist domestic abuse organisations that support victims of abuse in contact with the criminal justice system.

If a victim of domestic abuse is not able to disclose their experience prior to or during the trial, the full context of the homicide will not have been considered at prosecution or during the trial. For example, defences that could have been available may not have been raised or advanced appropriately. Alternatively, evidence may not have been available to prosecutors or the jury that could have resulted in a conviction for manslaughter rather than murder, or even a complete acquittal or the dropping of charges. Where a post-conviction disclosure of abuse is made, these issues cannot always be corrected through the current appeals process.<sup>134</sup>

## PREVALENCE AND PROFILES

The Crime Survey for England and Wales ("CSEW") for the year ending March 2023,<sup>135</sup> estimated that 1.4 million women and 751,000 men aged 16 and over had experienced

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<sup>129</sup> Centre for Women's Justice, *Women Who Kill: how the state criminalises women we might otherwise be burying* (2021) pp 120 to 121.

<sup>130</sup> Above, p 128, giving the example of the case of Iqbal Begum who was mistranslated as saying she was guilty.

<sup>131</sup> Above, p 54, citing N Sakande, *Righting Wrongs: What Are the Barriers Faced by Women Seeking to Overturn Unsafe Convictions or Unfair Sentences in the Court of Appeal (Criminal Division)?* (2020).

<sup>132</sup> See discussion in the prevalence section below.

<sup>133</sup> P Craven, *Living with the Dominator: A Book About the Freedom Programme* (2008).

<sup>134</sup> Issues include the 28-day time limit to appeal against conviction, as well as the rules on admitting fresh evidence of domestic abuse. These issues are considered further in our project on criminal appeals. For more information, see our [project webpage](#).

<sup>135</sup> Published by the Office for National Statistics ("ONS"), the Crime Survey for England and Wales ("CSEW") gathers information from a sample rather than from the whole population, therefore the figures should be taken as estimates. For further information on how the data is measured and the strengths and



domestic abuse in the last year – a prevalence rate of 5.7% and 3.2% respectively.<sup>136</sup> Lifetime prevalence is higher, with 27% of women having experienced domestic abuse since the age of 16, compared with 13.9% of men.<sup>137</sup>

Prevalence is even higher within the criminal justice system. The Prison Reform Trust found that 57% of women in prison in England and Wales report having been victims of domestic abuse as adults.<sup>138</sup>

The majority of perpetrators of domestic abuse are men. Data published by the Crown Prosecution Service (“CPS”) showed that in the year ending June 2024, there were 47,211 domestic abuse flagged prosecutions against male defendants, in contrast to 4,441 female defendants.<sup>139</sup>

It is likely that the actual number of victims is higher than data suggests, due to potential barriers victims face in reporting abuse to the police and support services which are discussed above.

The forms that abuse can take are also gendered. Heterosexual women and gay men report experiencing physical and sexual violence from male perpetrators, whereas lesbian women and heterosexual men are more likely to report emotional violence.<sup>140</sup> Research suggests that where women are violent towards a partner, that violence is more likely to be reactive.<sup>141</sup> Studies show that women are less likely to be the initiators of violence and are more often acting in self-defence.<sup>142</sup>

Amongst respondents to the CSEW, domestic abuse was most prevalent amongst mixed-race women, of whom 9.2% reported being victims of domestic abuse, followed by 6% of white women. The lowest prevalence was seen in Asian or Asian British women, 3% of

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limitations of the data, please see ONS, [Domestic Abuse Quality Methodology Information](#), 27 November 2024.

<sup>136</sup> ONS, Domestic abuse victim characteristics, England and Wales: year ending March 2023 <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabusevictimcharacteristicsenglandandwales/yearendingmarch2023#sex>.

<sup>137</sup> ONS, Domestic abuse prevalence and victim characteristics: year ending March 2023, Table 1a, available at <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/domesticabuseprevalenceandvictimcharacteristicsappendixables>.

<sup>138</sup> Prison Reform Trust, “There’s a reason we’re in trouble: Domestic abuse as a driver to women’s offending” (2017) p 7. We are not aware of data establishing the prevalence of domestic abuse amongst male prisoners.

<sup>139</sup> CPS Quarterly Publication: Prosecution Outcomes Management Information <https://www.cps.gov.uk/publication/cps-quarterly-data-summaries>. It should be noted that CPS data is collected via their monitoring flagging system. Electronic flags (for example, flags denoting that a case involves a vulnerable victim or hate crime) are usually applied at the onset of a case but may also be applied later if considered appropriate. It is CPS policy to keep flags in place, even if a decision is taken to charge an alternate offence or where a charge is subsequently amended, therefore the data may not accurately reflect how the case has developed.

<sup>140</sup> C Donovan and M Hester, *Domestic Violence and Sexuality: What's Love Got to Do with It?* (1st ed 2014) p 97.

<sup>141</sup> A O’Loughlin and others, *Defendants as victims* (2024) p 15.

<sup>142</sup> M Hester, “Portrayal of Women as Intimate Partner Domestic Violence Perpetrators” (2012) *Violence Against Women* 1068.

whom reported being victims of domestic abuse.<sup>143</sup> Data published by the CPS indicate that, of the 49,956 domestic abuse flagged prosecutions, 34,453 of them involved white British defendants (69%).<sup>144</sup>

Again, it is important to consider these figures in light of the potential barriers to reporting domestic abuse to the police and other support services. Dr Omolade Femi-Ajao and others note that women from ethnic minority populations can face language barriers, a lack of access to public services due to their immigration status, pressure from their community or culture to remain in the relationship, as well as beliefs in racial stereotypes amongst staff in support services.<sup>145</sup>

### Prevalence of domestic homicide – quantitative data

Patterns seen in domestic abuse are mirrored in data on domestic homicide. The Home Office Homicide Index indicates that between April 2012 and March 2023 there were 1,390 domestic homicides recorded in England and Wales. This relates to defendants in domestic homicide cases generally, and not specifically defendants who were victims of abuse who have killed the perpetrators of abuse; the terminology used in this section therefore reflects the terminology of the dataset.<sup>146</sup> Of these domestic homicides, 988 (71.1%) involved a male defendant and female deceased. In contrast, there were 134 (9.6%) domestic homicides involving a female defendant and male deceased.<sup>147</sup>

The methods of killing in domestic homicide also vary according to gender. Between April 2019 and March 2022, the primary method of killing in cases where the deceased was male was a sharp instrument (60.3%), followed by hitting and/or kicking (15.7%) and strangulation and/or asphyxiation (8.3%). Where the deceased was female, the most common method of killing was also, though less frequently, a sharp instrument (49.8%) followed by strangulation and/or asphyxiation (14.9%) and a blunt instrument (11.6%).<sup>148</sup>

Most commonly in domestic homicide cases, perpetrator and victim were partners or ex-partners. However, cases involving other, familial, relationships make up 39.7% of the

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<sup>143</sup> ONS, Domestic abuse prevalence and victim characteristics: year ending March 2023, Table 6, available at <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/domesticabuseprevalenceandvictimcharacteristicsappendixtables>.

<sup>144</sup> CPS Quarterly Publication: Prosecution Outcomes Management Information <https://www.cps.gov.uk/publication/cps-quarterly-data-summaries>.

<sup>145</sup> O Femi-Ajao, S Kendal and K Lovell, "A Qualitative Systematic Review of Published Work on Disclosure and Help-Seeking for Domestic Violence and Abuse among Women from Ethnic Minority Populations in the UK" (2018) 25(5) *Ethnicity & Health* 732.

<sup>146</sup> The Home Office records a homicide as "domestic" when the relationship between a victim aged 16 years and over and the perpetrator falls into one of the following categories: spouse, common-law spouse, cohabiting partner, boyfriend or girlfriend, ex-spouse, ex-cohabiting partner or ex-boyfriend or girlfriend, adulterous relationship, son or daughter (including step and adopted relationships), parent (including step and adopted relationships), brother or sister, other relatives.

<sup>147</sup> ONS, Homicide in England and Wales: year ending March 2023, Table 34 <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/appendixtableshomicideinenglandandwales>.

<sup>148</sup> ONS, Domestic abuse prevalence and victim characteristics: year ending March 2023, Table 22e, available at <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/domesticabuseprevalenceandvictimcharacteristicsappendixtables>.

dataset.<sup>149</sup> Between April 2019 and March 2022, 74.7% of female victims and 30.6% of male victims of domestic homicide were killed by a partner or ex-partner, 24.6% of victims were killed by their adult son or daughter, 2.2% were killed by a parent and 13% were killed by another family member.<sup>150</sup> We know there are also domestic homicides which involve people caring for family members with long-term illnesses or disabilities (known as unpaid carers), but the evidence on these homicides is still emerging.<sup>151</sup>

ONS provides a breakdown of outcomes for principal suspects<sup>152</sup> in domestic homicide cases (covering April 2019 to March 2022);<sup>153</sup> this gives us some (but arguably not sufficient) indication of the prevalence and success of defences raised. Cases that were decided at court<sup>154</sup> to be homicide are broken down into three categories of outcome: “murder”; “section 2 manslaughter” (ie the partial defence of diminished responsibility under section 2 of the Homicide Act 1957 as amended); and “other manslaughter”. “Other manslaughter” encompasses those convicted of involuntary manslaughter (ie unlawful and dangerous act manslaughter or gross negligence manslaughter) and those convicted of voluntary manslaughter after establishing a successful partial defence under section 54 of the Coroners and Justice Act 2009 (ie the loss of control defence).

The data also identify whether the suspects were male or female. The total number of principal suspects in the dataset is 370; 88.6% of these were male. 153 of the 370 suspects were convicted of murder, 90.8% of whom were male. 30 suspects were convicted of manslaughter by reason of diminished responsibility, 93.3% of whom were male. 46 suspects were convicted of “other manslaughter”, 73.9% of whom were male.

In contrast, female principal suspects make up 11.4% of the dataset. Of the 153 suspects convicted of murder, 9.2% were female. Of the 30 suspects convicted of manslaughter by reason of diminished responsibility, 6.7% were female. 26.1% of the 46 suspects convicted of “other manslaughter” were female.

The Office for National Statistics (“ONS”) also provides a breakdown of outcomes where proceedings were not initiated, concluded without conviction, or concluded in acquittal. Of the 370 suspects, only one (male) suspect is listed as having proceedings discontinued, not

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<sup>149</sup> ONS, Domestic abuse prevalence and victim characteristics: year ending March 2023, Table 22c, available at <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/domesticabuseprevalenceandvictimcharacteristicsappendixtables>.

<sup>150</sup> Above.

<sup>151</sup> S O'Dwyer, A Janssens, A Sansom, L Biddle, B Mars, T Slater, P Moran, P Stallard, J Melliush, L Reakes, A Walker, C Andrewartha, RP Hastings, “Suicidality in family caregivers of people with long-term illnesses and disabilities: A scoping review” (2021) *Comprehensive Psychiatry* 110; and S O'Dwyer, C Bishop, R Gimson, G Melendez-Torres, D Stevens and L Hardy, “From caring to killing: A typology of homicides and homicide-suicides perpetrated by caregivers” (forthcoming).

<sup>152</sup> For ONS Homicide Index data, the term “suspect” is defined as a person who has been arrested and charged with a homicide offence or a person who is suspected by the police of having committed a homicide offence and is known to have died prior to arrest or charge. It is not a reflection of conviction rates.

<sup>153</sup> ONS, Domestic abuse prevalence and victim characteristics: year ending March 2023, Table 24, available at <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/domesticabuseprevalenceandvictimcharacteristicsappendixtables>.

<sup>154</sup> The data are not any more specific than this and appears to include convictions following trial and guilty plea.

initiated or was acquitted.<sup>155</sup> The court found the defence of insanity made out in nine cases – only one of these suspects was female.<sup>156</sup>

Given the significant disparity between the number of male and female perpetrators in cases of domestic homicides, it is difficult to assess whether defences are successfully raised uniformly between male and female suspects. The figures suggest that male suspects are slightly more successful in raising a partial defence of diminished responsibility (4.7% of female suspects successfully ran the defence, compared to 8.5% of male suspects).

Whilst these figures are useful to some extent,<sup>157</sup> the ONS data do not tell us whether there is a connection between the type of relationship (between suspect and deceased) and the outcome. We are also not able to determine the proportion of suspects who were abused by the deceased before the homicide. This is unsurprising given the barriers to disclosure (outlined above) and gaps in record keeping.

Further, based on the published data, we are not able to establish definitive patterns in the use of defences available in these cases. The grouping of outcomes means that we do not know how many cases ended in a successful partial defence of loss of control. We also do not know the number of cases in which any defence was raised unsuccessfully.

Defences are not routinely recorded by the CPS or the Home Office so information can only be gathered via publicly available sources. If a person is given permission to appeal their homicide conviction and/or sentence to the Court of Appeal, the subsequent appeal judgment is published and may contain relevant details. However, the levels of detail vary (for example where the appeal deals with a narrow legal issue, the judgment may not set out full details of the Crown Court trial including how defences were raised and considered). For cases that are not appealed, details may be available from Crown Court trial transcripts,<sup>158</sup> news reports, or interviews with those directly involved in the trial, although these may not be complete nor available in every case. Where they are available, they may not contain sufficient information to ascertain whether a defence was raised and if so, how it was considered.

### **Prevalence of domestic homicide – typological reviews**

Academic studies and case reviews can help fill in some of the gaps in published government data. However, these also often reflect the paucity of reliable data.

In her research (which looked specifically at women who kill intimate partners) Professor Susan Edwards took data from the Home Office Homicide Index from the period April 2011 to March 2016. From this, she established that 40 female defendants were convicted of homicide offences against 39 male intimate partners/former partners and one female

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<sup>155</sup> The data are not any more specific about what the outcome was in the case.

<sup>156</sup> For completeness, 79 suspects were listed as having a court decision pending, and the suspect died or died by suicide in 3 and 49 cases, respectively.

<sup>157</sup> For example, they tell us that the partial defence of diminished responsibility was run successfully in 13.1% of cases that were decided at court.

<sup>158</sup> However, transcripts are only available at a cost, which can be prohibitive for some.

intimate partner. Professor Edwards tracked the circumstances and outcomes of these 40 cases through publicly-available sources, including online news articles.<sup>159</sup>

Professor Edwards reports that 3 of the 40 defendants were convicted of manslaughter by reason of diminished responsibility.

Seven of the 40 defendants were convicted of “no intent” manslaughter, and circumstances within this dataset were wide-ranging. For example, in one case the deceased had died as part of a suicide pact in which the defendant survived and was given an 18-month sentence, suspended for two years.<sup>160</sup> In another case, the female defendant had killed her male partner, disposed of the body and used the deceased’s Facebook account to attempt to convince family he had moved abroad. She was sentenced to 16 years’ imprisonment. The court noted that the deceased was controlling, sexually abusive and had forced the defendant into prostitution.<sup>161</sup>

Interestingly, Professor Edwards notes that none of the defendants in the sample were convicted of manslaughter by reason of loss of control.

The remaining 30 defendants were convicted of murder – at least four of those had pleaded guilty to murder. Professor Edwards notes that in two of these cases, there was evidence of violence from the deceased immediately prior to the fatal attack.

Due to the limited reporting (discussed above), Professor Edwards notes that it is not possible to establish exactly how many defendants unsuccessfully raised defences of self-defence, loss of self-control or diminished responsibility. However, Professor Edwards was able to say that self-defence was advanced, and evidence of violence from the deceased produced, in at least four cases. In one case, a murder conviction was quashed and a retrial ordered when the defendant produced expert medical evidence that indicated she was suffering from PTSD and traumatic amnesia due to being a victim of coercive control.<sup>162</sup> Following an appeal, the defendant pleaded guilty to manslaughter (it is not clear on what basis) and received a sentence of 10 years.<sup>163</sup>

Evidence of arguments and violence was produced in at least 10 of the cases. In one case, lack of intent was raised in the first instance, with the alternative case that the defendant was guilty of manslaughter due to loss of control and diminished responsibility. Despite the defendant’s evidence regarding a history of mental and physical abuse from the deceased, all the defences raised failed. On appeal, it was held that there were no grounds upon which it was arguable that the conviction was unsafe, and the appeal was refused.<sup>164</sup>

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<sup>159</sup> S Edwards, “Women who kill abusive partners: reviewing the impact of section 55(3) ‘fear of serious violence’ manslaughter—some empirical findings” (2021) 72(2) *Northern Ireland Legal Quarterly* 261.

<sup>160</sup> [“Suicide pact wife avoids prison over husband's killing”](#) (7 May 2014) BBC News.

<sup>161</sup> Chris Pleasance [“Prostitute killed ‘domineering’ pimp boyfriend - then raided his bank account while posing as him on Facebook to pretend he was alive and enjoying the single life”](#) (17 March 2015) Mail Online.

<sup>162</sup> *Martin* [2020] EWCA Crim 1798.

<sup>163</sup> [“Farieissia Martin jailed for manslaughter after murder conviction quashed”](#) (21 May 2021) BBC News.

<sup>164</sup> *Hughes* [2015] EWCA Crim 2514.

The Centre for Women's Justice ("CWJ") have conducted research, including in-depth interviews with 20 women who had been convicted of killing men who they say were abusive towards them between 1997 and 2017.<sup>165</sup>

Of the 20 defendants, 18 were convicted of murder after a trial. Of those 18, two had raised loss of control as their only defence, two had raised self-defence as their only defence, and one had raised diminished responsibility and loss of control (this conviction was quashed eight years later and a manslaughter plea accepted).

The remaining two defendants were convicted of manslaughter. In one case the defendant raised self-defence and diminished responsibility and was sentenced to 14 years' imprisonment. The defendant in the second case raised self-defence, diminished responsibility and provocation<sup>166</sup> and received a three-and-a-half-year sentence, which was reduced to two years on appeal.

In her review of sentencing in domestic homicide cases, Clare Wade KC looked at a sample of 120 cases of domestic homicide between 2018 and 2020 where the deceased was a partner or ex-partner of the defendant.<sup>167</sup> The sample was made up of 21 female defendants and 99 male defendants.<sup>168</sup>

Of the 120 defendants, 31 were convicted of manslaughter and the review provides data on the type of manslaughter by the gender of the offender. There were 13 convictions of unlawful and dangerous act manslaughter and 12 for manslaughter by reason of diminished responsibility (six of which received hospital orders). There were three convictions of gross negligence manslaughter (all male) and two of loss of control manslaughter (both female). The report states that loss of control was raised unsuccessfully in a further nine cases.<sup>169</sup>

The data on prevalence of domestic abuse and homicide show the gendered nature of this behaviour. The majority of perpetrators are men, and the majority of victims are women. Where women do commit both domestic abuse and domestic homicide, the available data suggest that the context of offending, and the outcomes, can be different from male defendants. Whilst the data on defences are limited, they do show that the majority of defendants in domestic homicide cases are convicted of murder, which suggests that the available defences to murder are either not being raised, or are raised but are unsuccessful. Data on defences in cases where victims of abuse kill their abusers are even more limited but again suggests that the available defences are not being raised, or are raised unsuccessfully.

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<sup>165</sup> Centre for Women's Justice, *Women Who Kill: how the state criminalises women we might otherwise be burying* (2021).

<sup>166</sup> This conviction pre-dates the abolition of this defence.

<sup>167</sup> C Wade, *Domestic Homicide Sentencing Review* (2023) para 1.4.1. The report acknowledged that due to the methods used to identify relevant cases, it may not have identified every relevant case from the period reviewed.

<sup>168</sup> Above, p 123.

<sup>169</sup> Above.



## SOCIAL ATTITUDES

This project will explore answers to two important questions. First, what is a just outcome in a case where a victim of domestic abuse kills their abuser? Understanding this will help us to assess whether the current law operates appropriately and if not, what potential law reform would remedy this.

Secondly, what is the common understanding of the issues in these cases? Answering this will give us insight into how juries and legal professionals approach these cases, and whether reform to improve understanding (for example through training or juror directions) may be appropriate.

Evidence of social attitudes, for example, surveys of public perceptions on this topic, will help us in finding answers to these questions.

Currently we understand that there is a limited evidence base for social attitudes to victims of abuse who kill their abuser and the criminal justice response to such defendants. We are aware of research being undertaken by academics at the University of Northumbria into public perceptions of the use of self-defence in domestic abuse cases using focus group testing.<sup>170</sup> The aim of the research is to provide insight into the public perceptions of the circumstances of those who use violent resistance in response to domestic abuse, and the access to the defence of self-defence in this context, to inform review of the substantive law.

We are interested to hear from others who are undertaking (or have undertaken) similar research into social attitudes and public perceptions relating to these issues, or who are considering undertaking such research.

## NEXT STEPS

We will use the definitions, research and understandings outlined in this paper to inform the rest of our work in this area. Since work began on this review, the Law Commission has announced a broader review of homicide law.<sup>171</sup> We are now able to consider more holistically the way that the law operates when a victim of domestic abuse kills their abuser. As part of the broader homicide project we will consider the homicide offences for this group of defendants. We will also continue our work on defences for victims of abuse who kill their abuser within the umbrella of the homicide project, which will also cover sentencing when such defendants are convicted of murder.

In the next stage of our review of defences for this group of defendants, we will consider whether the current substantive law of defences to homicide, and the rules of evidence and the trial process, produce just outcomes when victims of domestic abuse kill their abuser. We will also consider how the issues and experiences summarised in this paper can inform the broader review of homicide offences and defences, and sentencing for murder.

More information about our defences review is available at our webpage at <https://lawcom.gov.uk/project/defences-for-victims-of-domestic-abuse-who-kill-their->

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<sup>170</sup> V Bettinson, T Crofts and N Wake, "Preparing a Public Perception Study in the use of Violent Resistance as Self-Defence in Domestic Abuse Cases" in M Burton, V Bettinson, K Richardson and A Speed (eds), *Research Handbook on Domestic Violence* (2024) pp 346 to 365.

<sup>171</sup> For more information about the project, see the [homicide project webpage](#).

[abusers/](#). If you have any comments about this paper, would like to share relevant past, ongoing or future research, or to be kept up to date with our progress, you can email us at [domestic.homicide@lawcommission.gov.uk](mailto:domestic.homicide@lawcommission.gov.uk).

## RESOURCES

The Domestic Abuse Commissioner's website contains a list of organisations who offer advice and support for those who have experienced or are experiencing domestic abuse, rape and sexual assault, stalking and harassment. The list includes organisations who offer support to women, men and LGBT+ victims, as well as support for Black, minoritised and migrant victims. The list also includes organisations providing support to children and parents who are experiencing abuse, deaf and disabled people who are experiencing abuse, and those who are experiencing faith-based abuse. The website page also provides information on organisations that offer legal support to victims of abuse. The list can be found at <https://domesticabusecommissioner.uk/i-need-help/>

The above webpage includes details of Advocacy After Fatal Domestic Abuse ("AAFDA"), who offer support to family and friends bereaved by fatal domestic abuse. Other organisations who offer support services to family and friends bereaved by homicide include:

- Victim Support Homicide Services: <https://www.victimsupport.org.uk/more-us/why-choose-us/specialist-services/homicide-service/>
- SAMM (Support After Murder and Manslaughter) National: <https://samm.org.uk/>
- Winston's Wish: <https://winstonswish.org/death-through-homicide/>

The Government also has a search tool to help people find bereavement support services in their local area: <https://www.gov.uk/find-bereavement-services-from-council>.