

Centre for Women's Justice (CWJ) submission to Sentencing Council consultation on Perverting the Course of Justice and Witness Intimidation Guidelines

June 2022

Introduction

Centre for Women's Justice (CWJ) is a lawyer-led charity focused on challenging failings and discrimination against women in the criminal justice system. We carry out strategic litigation and work with frontline women's sector organisations to challenge police and prosecution failings to tackle violence against women and girls (VAWG). As such we have gathered evidence which provides the basis for our recommendations for changes to sentencing guidelines to help ensure fair treatment of victims¹ of VAWG who are convicted of offences. This submission only covers questions relating to Perverting the Course of Justice (PCJ) where they relate to defendants whose offence arose in the context of their experience of VAWG, in which CWJ has relevant expertise.

Nearly 60% of women in prison and under community supervision in England and Wales are victims of domestic abuse. Through our legal advice and casework service, we regularly receive referrals from women facing prosecution for a wide range of alleged offending resulting from their experience of domestic abuse and other forms of VAWG and exploitation.

Over the past thirty years CWJ's director, Harriet Wistrich, has been at the forefront of challenging convictions of women who have killed their abusive partner while subject to coercive control and other forms of domestic abuse. In 2021, CWJ published a major piece of research considering the barriers to justice for women who kill their abuser.² Although the focus of that research is on the small number of women who kill, it also sheds light on the criminal justice system's ability to deliver justice more widely for those who offend due to their experience of abuse. Our 2022 Double Standard report sets out how women's offending more broadly is often directly linked to their own experience of domestic abuse, and how victims can be unfairly criminalised in a wide variety of ways, including for PCJ offences.³

Executive summary

We agree that sentencing guidelines are needed in relation to PCJ which can be a serious offence, often leading to imprisonment. The draft guidelines do not adequately address the considerations that should apply where victims of VAWG are convicted of PCJ. In these cases, the guidance must ensure that full consideration is given to the context of domestic abuse or other forms of VAWG in which the offence may have taken place. The guidance should guard against the use of custody where

¹ We use the term 'victim' as that is the term used by most criminal justice and other official agencies, however the term 'survivor' is preferred by women's sector organisations.

² [Centre for Women's Justice \(2021\) Women who kill: how the state criminalises women we might otherwise be burying](#)

³ [Centre for Women's Justice \(2022\) Double Standard: ending the unjust criminalization of victims of VAWG](#)

there is evidence that the offence took place in the context of the defendant's experience of domestic abuse or other forms of VAWG, and/or where there is evidence that such defendants are mentally disordered.

There are special considerations that apply to PCJ offences committed in the context of VAWG, as the CPS have recognised in their Guidance for Charging Perverting the Course of Justice and Wasting Police Time in Cases involving Allegedly False Allegations of Rape and/or Domestic Abuse (the 'CPS PCJ guidance').⁴ Our experience shows that this guidance not followed in practice. CWJ and others who work with us have been involved in a number of cases where victims of VAWG have been prosecuted for PCJ offences, many of which involve clear evidence that the defendant is mentally disordered, often as a consequence of past instances of VAWG.

The draft guidelines should be amended to ensure as far as possible that sentencing takes appropriate account of defendants' experience of VAWG and exploitation, and any mental health needs in such cases. Separate, stand-alone guidance and training should also be introduced to ensure more generally that sentencers take appropriate account of defendants' experience of VAWG and exploitation, when sentencing for any offence.

In summary, in response to the overarching questions raised by this consultation:

- **What are the principal factors that make any of the offences included within the draft guidelines more or less serious?**

The guidelines should make it clearer that where the offence was committed by a victim of domestic abuse and/or another form of VAWG, this may make the offence less serious.

- **What are the additional factors that should influence the sentence?**

The guidelines should go further to ensure that sentencing is sufficiently influenced by evidence that the defendant is mentally disordered, and/or that the defendant has been the victim of domestic abuse and other forms of VAWG or exploitation.

- **What are the types and lengths of sentence that should be passed?**

The guidelines should be amended to reduce the likelihood of a custodial sentence in lower culpability cases where the defendant is a victim of domestic abuse and other forms of VAWG or exploitation, or where there is clear evidence that the defendant is mentally disordered. Many such cases involve defendants who are historical rape/child abuse victims.

- **Are there any issues relating to disparity of sentencing and/or broader matters relating to equality and diversity that the guidelines could and should address?**

⁴ [CPS \(2019\) Guidance for Charging Perverting the Course of Justice and Wasting Police Time in Cases involving Allegedly False Allegations of Rape and/or Domestic Abuse](#)

Women, as compared to men, are disproportionately likely to be victims of domestic abuse and other forms of VAWG and exploitation that could lead to them being convicted of a PCJ offence. Black, Asian, minoritised and migrant women, as well as disabled women – including those with mental health needs, face additional barriers to accessing support and accessing justice. Young women experience distinct circumstances that are often overlooked. The guidelines must be amended to address these matters specifically, to help ensure equal treatment in relation to race, gender, disability and age.

- **What else should be considered?**

Additional guidance should be introduced for sentencers, with accompanying training, for reference in any case involving a defendant who is a victim of domestic abuse or another form of VAWG or exploitation, or where this has been alleged (see further below).

There should be monitoring and evaluation of the guideline to ensure that its impact is not inflationary.

Links between women’s offending and their experience of domestic abuse and other forms of VAWG – in figures

The following key figures illustrate the prevalence of the experience of domestic abuse and other forms of VAWG amongst women and girls serving sentences in prison and in the community, as well as disparities in the treatment of Black, Asian, minoritised and migrant women.

- At least 57% of women in prison and under community supervision are victims of domestic abuse.⁵ The true figure is likely to be much higher because of barriers to women disclosing abuse.⁶
- 63% of girls and young women (16–24) serving sentences in the community have experienced rape or domestic abuse in an intimate partner relationship.⁷
- Of 173 women screened at HMP Drake Hall, 64% reported a history indicative of brain injury and for most this was caused by domestic violence.⁸
- Women are more likely than men to commit an offence to support someone else’s drug use (48% to 22%).⁹
- Arrest rates in 2014/15 were twice as high for Black and ‘mixed ethnic’ women as for white women.¹⁰

⁵ [Ministry of Justice \(2018\) Female Offender Strategy](#). This is likely to be an underestimate because of barriers to disclosing abuse. ([Gelsthorpe, L., Sharpe, G., and Roberts, J. \(2007\) Provision for Women offenders in the community](#))

⁶ [Gelsthorpe, L., Sharpe, G., and Roberts, J. \(2007\) Provision for Women offenders in the community; Centre for Women’s Justice \(2021\) Women who kill: how the state criminalises women we might otherwise be burying](#)

⁷ [Wong, K. et al. \(2017\) T2A Final Process Evaluation Report, Policy Evaluation Research Unit](#)

⁸ [The Disabilities Trust \(2019\) Making the link: Female offending and brain injury](#)

⁹ [Light, M. et al \(2013\) Gender differences in substance misuse and mental health amongst prisoners](#)

¹⁰ [Ministry of Justice \(2016\) Black, Asian and Minority Ethnic disproportionality in the Criminal Justice System in England and Wales](#), p. 12

- Migrant women are overrepresented in prison, particularly on remand.¹¹
- Most women are imprisoned on short sentences, and most are imprisoned for non-violent offences.¹²
- An estimated 17,000 children experience their mother's imprisonment each year.¹³ 600 pregnant women, on average, are held in prison each year.¹⁴
- Women are imprisoned further from home than men and receive fewer visits, limiting their capacity to maintain relationships and family contact. Prisoners who receive visits from family members are 31% less likely to reoffend than those who do not.¹⁵
- Women are much more likely than men to self-harm whilst in prison. In 2020, women made up 22% of all self-harm incidents despite making up only 4% of the prison population.¹⁶
- Short prison sentences are less effective in reducing reoffending than community sentences. Between April and June 2016, 51.6% of women released from custody reoffended within a year, compared to 70.7% of women following a sentence of less than 12 months.¹⁷

Based on the Sentencing Council's analysis of the Ministry of Justice's Court Proceedings Database for 2020/21:

- Nearly one-third (31%) of sentences given to women for PCJ were for immediate custody, while 56% were Suspended Sentence Orders. (Table 1.6)
- Nearly two-thirds of the immediate custodial sentences given (the total given was 33) were for less than a year (64%). (Table 1.8)
- Black adults and mixed race adults were proportionately more likely to be sentenced to immediate custody than White adults and Asian adults (both 64%, compared to 53% for White adults and 45% for Asian adults). Note this does not account for differences between the sexes. (Table 1.6)

However, these figures should be treated with caution due to the small numbers involved and the fact that 2020 was not a representative year due to the impact of Covid-19 lockdown.

The rate of imprisonment of women for PCJ is particularly worrying because it is common in our experience for such defendants to have mental health disorders. Anecdotally, such disorders are often combined with a history of having been victims of VAWG. Sentencing for PCJ in relation to allegedly false allegations is harsher in England and Wales than in other comparable jurisdictions.¹⁸

¹¹ [Robson, M. \(2022\) A suspect population? An examination of bail decision making for foreign national women in criminal courts in England and Wales. See also: Prison Reform Trust \(2018\) Still no way out: foreign national women and trafficked women in the criminal justice system](#)

¹² [Prison Reform Trust \(2021\) Why focus on reducing women's imprisonment in England and Wales?](#)

¹³ [Kincaid, S., Roberts, M. & Kane, E. \(2019\) Children of Prisoners: Fixing a broken system](#)

¹⁴ [Birth Companions \(2016\) Birth Charter for women in prisons in England and Wales](#)

¹⁵ [Prison Reform Trust \(2021\) Why focus on reducing women's imprisonment?](#)

¹⁶ Ibid

¹⁷ Ibid

¹⁸ "109 women prosecuted for false rape claims in five years, say campaigners" Guardian, 1 December 2014, <https://www.theguardian.com/law/2014/dec/01/109-women-prosecuted-false-rape-allegations>

Relevant categories of PCJ offences

PCJ covers a wide range of offending behaviour and background circumstances, which are not broken down in published statistics. Through our casework experience and research, we have identified three main categories of PCJ prosecutions of women in connection with their experience of VAWG or alleged VAWG:

- 1) **Allegedly false allegations:** Cases in which a woman has made an allegation of VAWG (e.g. rape/sexual assault, domestic abuse) against a man and her allegation has been deemed to be false;
- 2) **Retracted allegations:** Cases in which women are pursued for PCJ where they have retracted an allegation of VAWG which is known to be truthful;
- 3) **Coercive control:** Cases in which a woman is accused of helping to cover up, or assist in some other way, a crime that has been committed by her abusive partner.

1) Allegedly false allegations

Background: culture of victim blaming

Edie: Edie was a professional working for a local authority who was sexually assaulted by a colleague during a social event. She reported this to her employer, an investigation took place and the colleague was dismissed. A few months later she reported the rape to the police. Several weeks after that, she was called in for a meeting at which the police effectively threatened Edie with arrest for making a false allegation, saying, “You don’t have a criminal record and we’d like to keep it that way”. Frightened and concerned about her career, Edie decided to withdraw her allegations, and the case was closed.

Edie’s case, above, shows the chilling effect that the threat of proceedings for false allegations can have, when a victim considers reporting a rape. While the draft guidelines are plainly focused on only one part of the criminal justice process, namely sentencing, it is important to place this discussion within the wider context of the barriers to justice that exist for victims of VAWG throughout the criminal justice system, both as victims and as alleged offenders. Sentencing in these cases must take account of these broader considerations.

There are many reasons why allegations of sexual assault may not be found credible in the context of applying the evidential test, which requires a realistic prospect of conviction at the very high criminal standard. In many instances, as is well documented, this may include a culture of disbelief and failure to recognise the impact of abuse which may lead survivors to give inconsistent accounts. Even in cases where there may be apparent reasons to prefer the alleged abuser’s version of events, unless there is evidence of malicious intent, it appears inappropriate to threaten or pursue prosecution. In cases where the allegations are made only to

friends or family and not to the police, this should also be taken into account as a factor mitigating against prosecution or against a heavy sentence.

As is well documented and understood, there are many myths and stereotypes associated with women's behaviour in rape and domestic abuse cases. Women who are victims of such crimes may behave in ways that are counter-intuitive or can appear from the outside to be inconsistent. For example, a victim of a date rape may communicate with the alleged rapist saying what a nice evening she had. Or she may lie about, or play down, any overtly flirtatious behaviour by her before the alleged rape. Such behaviour does not mean the rape didn't happen, but could be an indicator of cultural pressures as to how women may be expected to behave. A victim of coercive and controlling behaviour may seek to reassure her abuser by saying she loves him and wants to be with him. Such behaviour can be explained and understood by those with an expert understanding of these crimes within a culture of victim blaming.

However, these are often factors that lead police or prosecutors to decide that such cases fall below the evidential threshold of 'reasonable prospects of a conviction'. We have seen in some cases that this may even lead to an investigation and prosecution for PCJ. We are concerned that there are pressures on the CPS to bring such cases to trial, even where the alleged false complaint is equivocal. Once the complainant becomes a defendant, she loses her right to anonymity and she loses many of the protections that have been introduced to assist victims provide evidence, such as guidance on rape myths and stereotypes. Such prosecutions can result in a conviction where jurors are not provided with expert evidence or guidance to enable them to make judgements free from myths and stereotypes and a contextual understanding of such behaviour.

We are additionally concerned that there are pressures that come from lobby groups who promote the view that many victims make false complaints, which may influence the CPS to bring such cases to trial even where the alleged false complaint is equivocal.

CPS guidance and prosecution practices

The CPS, despite its own guidelines, is sometimes over-zealous in prosecuting women for the serious offence of PCJ when police disbelieve their complaints of rape and/or domestic violence, and that this leads to injustice for those victim defendants. We have seen some prosecutions of women for such crimes where the resources dedicated to investigating PCJ and securing a conviction are disproportionate to the average rape or domestic abuse investigation or prosecution.

Our [Double Standard](#) report describes the circumstances in which victims of VAWG may face inappropriate prosecution, including the case of Edie (above). The CPS PCJ guidance should be followed when prosecution is being considered in such cases. The guidance states, '*Prosecutions for these offences in the situations above will be extremely rare and by their very nature they will be complex and require*

sensitive handling.¹⁹ However Edie's case, and our wider experience, suggests this guidance is not consistently followed in practice.

Noting the deficiencies in rape investigations and high levels of police scepticism towards those who allege rape, Lisa Avalos has argued that, by singling out allegedly false allegations of rape and/or domestic abuse, the CPS PCJ guidance may in fact tend to encourage prosecution for PCJ in this context. She explains:²⁰

Bringing charges against rape complainants occurs more regularly in Great Britain than in any other western industrialized country, and the British experience is a cautionary tale of what can go wrong when prosecutors actually have a policy that encourages such prosecutions in a context characterized by widespread, systemic failures to properly investigate and prosecute sex crimes.

Although the policy was intended to avoid inappropriate prosecutions, as Avalos points out, it '*might not eliminate that problem if the underlying attitudes and bias towards victims of sexual violence are not addressed*'.²¹

Our experience leads us to conclude that there is sometimes an over-willingness of law enforcement authorities to prosecute, convict and imprison women who allege sexual violence with offences of perjury and PCJ, in circumstances where there is no unequivocal evidence that the allegations have been fabricated and/or where the woman's mental health might merit a different analysis and approach. Article 5 of CEDAW recognises that discrimination against women can occur because of gender stereotyping. We note the comments made in the CEDAW Committee's General Recommendation 33 on access to justice, on stereotyping and gender bias in the justice system and the importance of capacity-building, which refers to the re-victimizing of women who complain of their experiences of violence.²²

Eleanor de Freitas: In April 2014, three days before she was due to stand trial at Southwark Crown Court on the charge of perverting the course of public justice, 23 year-old Eleanor de Freitas, who had bi-polar disorder, took her own life. This case related to allegations that she made to police against a man with whom she had a brief sexual relationship. The police investigation of this man for rape was quickly discontinued. However, the man she accused pursued a private prosecution of Eleanor de Freitas for PCJ which surprisingly the CPS took over and pursued, despite her obvious vulnerability.²³ Since her death, repeated efforts have been made by Eleanor's father to hold the CPS accountable for their actions. These efforts have met with a range of barriers and are currently subject to an application to CEDAW.

¹⁹ [CPS Legal guidance, Sexual Offences: False allegations of rape and/or domestic abuse, updated and reviewed September 2019](#)

²⁰ Lisa Avalos, *The Chilling Effect: The Politics of Charging Rape Complainants with False Reporting*, 83 *Brook. L. Rev.* (2018). Available at: <https://brooklynworks.brooklaw.edu/blr/vol83/iss3/1> (p.812)

²¹ *Ibid*, p.820

²² CEDAW General Recommendation 33, UN Doc CEDAW/C/GC/33, 23 July 2015, paragraphs 26-29.

²³ 'Eleanor de Freitas "killed herself ahead of rape claim trial"' BBC Online, 15 March 2015, <https://www.bbc.co.uk/news/uk-31930196>

Eleanor de Freitas' case (above) is in our view a clear example of an inappropriate, over-zealous prosecution, which had devastating consequences. Avalos' analysis of the case found no evidence that it met the standards set out in either the CPS PCJ guidance or the rape investigation best practice guidelines promulgated by the International Association of Chiefs of Police (IACP), to allow a report of rape to be considered false.²⁴

Based on our experience, we believe that these prosecutions often take place because of a lack of understanding amongst police and prosecutors regarding the realistic dynamics of sexual assault or coercive and controlling behaviour. This results, in part, from a lack of appropriate training in sexual assault investigation. In a hearing in Parliament about this issue, evidence was heard that the United Kingdom is particularly draconian in its treatment of alleged false reporting: comparisons with the United States for example, demonstrate that such prosecutions are much rarer there, and in the US the prosecutions typically result in non-custodial sentences of a fine, probation, or community service.²⁵

Court proceedings, including sentencing

For those who are prosecuted, barriers to justice exist throughout court proceedings and it appears that custodial sentences are frequently imposed on clearly vulnerable individuals. Defendants in these cases lose all the benefits given to rape victims in trials, including anonymity and guidance on rape myths and stereotypes. They should remain entitled to these protections, which have been devised in recognition of the prejudice complainants in rape cases routinely experience. Defendants should be regarded as innocent until proved guilty, but they may be more likely to be found guilty where they are denied protection from those who hold beliefs which are infected by a culture of victim blaming and other rape myths and stereotypes. The absence of guidance on rape myths and stereotypes was recognised by the Court of Appeal in R v Beale.²⁶

In many cases involving defendants who have been convicted of PCJ because they are found to have made a false allegation, the defendant is mentally disordered. More needs to be done to ensure this is sufficiently taken into account in sentencing. CWJ represented Jemma Beale in her appeal against conviction and sentence for several counts of perjury and PCJ in relation to several false allegations of rape and/or sexual assault over a three-year period. It was undisputed that she had been the victim of a child rape prior to the false rape allegations. Even faced with new expert evidence suggesting she had profound mental health difficulties, an appeal judge still felt that Ms Beale's 10-year sentence was in accordance with sentencing guidelines - a sentence that was much longer than sentences commonly given to those who are found guilty of rape.²⁷

²⁴ Op. cit. fn 20 (p.840)

²⁵ "109 women prosecuted for false rape claims in five years, say campaigners" Guardian, 1 December 2014, <https://www.theguardian.com/law/2014/dec/01/109-women-prosecuted-false-rape-allegations>

²⁶ R v Beale [2017] EWCA 1012 (Crim)

²⁷ Op. Cit. fn 26

Avalos notes the comparatively harsh sentencing of rape complainants who are convicted of PCJ in England and Wales, and the risk that some of those convicted may in fact be genuine rape victims:²⁸

In Britain, where making a false allegation of rape is considered a very serious crime, it is not unusual for a woman who is convicted to receive a two to four-year prison sentence. Even after serving their sentences, several such women maintain that they are genuine rape victims.

We attach an analysis by Women Against Rape (WAR) (subsequently updated by a team of barristers at Red Lion Chambers) of cases where women were accused of having lied about sexual offences, and the sentences they received. The analysis of 172 cases reported between 1996 and 2018, compiled mostly from media reports, showed that many women received immediate custodial sentences in this period as opposed to community orders, despite obvious vulnerabilities in some cases. This included four cases in which women had reported a rape because they feared the reaction of their violent partner to their infidelity.

A number of these cases raise serious concern that contextual domestic abuse was not taken into account in relation to decisions on prosecution, conviction and sentencing. Many of the women whose cases are outlined by WAR continued to maintain that their allegations were true. Many had mental health needs and/or were past survivors of rape or domestic violence, including in childhood. It is notable how many were young women. It is concerning that so many of these cases nonetheless resulted in prison sentences.

2) Retracted allegations

In one of the cases analysed by WAR, 'Sarah' (case 93 – November 2010) received an eight-month prison sentence for retracting a truthful allegation of rape by her husband. She had reported him to the police for raping her five times, before withdrawing her allegation under pressure from her husband and his sister. She was then charged and convicted for retracting a truthful allegation. 'Sarah' was released on appeal after 18 days in prison, but her conviction was not quashed. At the appeal Alison Levitt QC said the Crown "unreservedly accepts the factual background to this case. It's plain that [she] was subjected to a lengthy period of domestic violence and it's implicit in the plea that she was the victim of rape."

It was this case that led to the introduction of the CPS PCJ guidance. However, there is no reason to assume that the existence of the guidance will have stamped out the culture and practice that led to this appalling prosecution. The fact that the prosecution was brought at all gives an indication of the need for sentencers to ensure they are informed of all the surrounding circumstances in any case involving a rape complainant facing proceedings for an allegedly false allegation, let alone retraction of a truthful allegation.

²⁸ Op. Cit. fn 20, p.812

3) Alleged PCJ by victims of coercive and controlling behaviour

Background: unjust criminalisation of victims of VAWG and action needed

Our 2022 [Double Standard](#) report draws on case studies from CWJ's legal enquiries service, and earlier research, to explain the barriers to justice faced by victims throughout the criminal justice process, including the failure to identify victims and deficiencies in the system that prevent the context of abuse being properly taken into account. In the report, we call for improvements in guidance and practice to be implemented throughout the criminal justice process to ensure that:

- (a) Suspects/defendants who are potential victims of domestic abuse and other forms of VAWG are identified as such at the earliest possible stage in proceedings.
- (b) Once identified, victim suspects/defendants are protected from abuse, effectively referred to support services, and not stigmatised.
- (c) Suspects/defendants' rights as victims are upheld irrespective of any actual or potential criminal proceedings against them.
- (d) Criminal justice practitioners at every stage of the process, judges, magistrates and juries are able to take proper account of the abuse suffered by victim suspects/defendants and its relationship to any alleged offending.
- (e) Effective procedural safeguards are accessible to enable victim suspects/defendants to give their best evidence about contextual domestic abuse.

Additional hurdles are faced by Black, Asian, minoritised and migrant women, disabled women and young women, as outlined below.

No police or CPS guidance on coerced offending

CPS legal guidance on identifying Controlling or Coercive Behaviour²⁹, and the Home Office Statutory Guidance Framework on Controlling or Coercive Behaviour³⁰ both list relevant behaviour of the perpetrator as potentially including:

Forcing the victim to take part in criminal activity such as shoplifting, neglect or abuse of children...

However, this is not matched by a statutory defence for coerced offending. Nor is there any police or CPS guidance on ensuring decisions to arrest or prosecute take account of contextual abuse and coercion. Beyond background information for criminal justice agencies about working with women involved in offending³¹, there is no specific police or CPS guidance on the need to consider contextual domestic abuse in relation to offences other than counter-allegations of use of force.

We have called for this gap to be filled with new CPS and police guidance, to cover the broader circumstances in which alleged offending by a victim does not take place as part of a domestic abuse incident. This includes cases in which victims may be

²⁹ [CPS Legal Guidance on Domestic Abuse, Controlling or Coercive Behaviour in an Intimate or Family Relationship \(reviewed 30 June 2017\)](#)

³⁰ [Home Office \(2015\) Controlling or Coercive Behaviour in an Intimate or Family Relationship: Statutory Guidance Framework](#), p.4

³¹ [Ministry of Justice \(2018\) Managing vulnerability: Women – Fact Pack](#); [Ministry of Justice \(2018\) A Whole System Approach for Female Offenders: Emerging evidence](#)

accused of PCJ offences. The guidance should be accompanied by training to support police and prosecutors in identifying victims at an early stage, and correctly interpreting signs of domestic abuse and their relevance to the alleged offence. Reforms are also needed to the court process to ensure victims who are prosecuted can give their best evidence about the context of abuse.

Joint enterprise convictions

Convictions under the law of joint enterprise frequently fail to take account of contextual coercion and abuse. Most women convicted under the law of joint enterprise are convicted in relation to serious violent offences despite not having taken part in any violence, and often despite being marginal to the violent event or not even present at the scene. These women are constructed as the facilitators of violence and severely punished, often without taking account of the context of domestic abuse which they were experiencing at the time, and the impact of this on their actions or omissions.³²

Amendments needed to the guidelines

The draft guidelines need to be amended to ensure they properly take into account the experiences of women who are subject to coercive and controlling behaviour, and who are either coerced into PCJ offending, or whose actions in the context of a coercive relationship appear to constitute PCJ.

For example, the guidance on culpability needs to deal more explicitly with the dynamics of domestic abuse. It might be too easy for a sentencing judge to look at the words ‘through coercion, intimidation or exploitation’ and think that this does not apply in cases where the defendant has not been expressly coerced into committing the offence. The wording here could be more tailored to domestic abuse scenarios, such as ‘or as a result of domestic abuse’ and should refer not only to coercion but also to coercive control. Alternatively, this wording could appear under ‘Mitigating factors’.

The need for this is illustrated in the case of Megan Armstrong-Challinor (below), who was ultimately acquitted of PCJ following two trials vigorously pursued by the CPS.

Megan Armstrong-Challinor

MA was a victim of serious violence and coercive control. Her then partner was mentally unstable and during her relationship MA was strangled till she lost consciousness, beaten, kicked, and threatened with a knife. She also sustained financial abuse. Her then partner would not allow her any contact with friends, and only permitted limited contact with her family. He would frequently tell her what she was and was not allowed to do. As a result of the abuse MA has severe PTSD.

In mid-2019, MA’s partner murdered another man. MA was not involved, however, she was charged with PCJ for allegedly trying to help her partner evade capture by the police. The case against her presented by the prosecution was that she had

³² [Clarke, B. and Chadwick, K. \(2020\) Stories of Injustice: The criminalisation of women convicted under joint enterprise laws.](#) See also: [Hulley, S. \(2021\) Defending ‘co-offending’ women: Recognising domestic abuse and coercive control in ‘Joint Enterprise’ cases involving women and their intimate partners, Howard Journal of Crime](#)

picked up her partner and driven him to different addresses, as well as assisted him in obtaining a quantity of cash and a 'pay as you go' phone. MA was, however, unaware of what her ex-partner had done. She simply carried out these tasks because of the extent of her partner's coercive and controlling behaviour, which programmed her to comply with whatever he demanded of her. He told her that he had lost his phone and wanted her to buy a cheap phone. She remained terrified of the threat of his violence if she questioned or challenged his demands. He often required her to drive him to different addresses.

The Crown prosecuted MA for PCJ, after her ex-partner had been convicted of murder. They continued that prosecution despite detailed representations from her defence solicitors and CWJ, that there was insufficient evidence for a realistic prospect of conviction and that the prosecution was not in the public interest. At the trial, there was a hung jury. The CPS insisted on a re-trial in which MA was acquitted.

Answers to the consultation questions

We respond further below to some of the consultation questions. Overall, we believe the guidance should guard against the use of custody where there is evidence that the offence took place in the context of the defendant's experience of domestic abuse or other forms of VAWG, and/or where there is evidence that the defendant is mentally disordered.

Question 1: Do you have any comments on the culpability factors? Are there any that should be removed or added?

The draft guidelines set out the following proposed factors for lower culpability:

- Involved through coercion, intimidation or exploitation
- Offender's responsibility substantially reduced by mental disorder or learning disability.

We agree with the inclusion of both of these factors. They should be strengthened and further information provided to ensure they capture circumstances in which victims of VAWG and those with mental health needs are convicted of PCJ.

Where such defendants fall in B and C for culpability (which already covers, inter alia, defendants having a mental disorder), the starting point and range of sentences should be lower than currently and allow for non-custodial sentencing.

Question 2: Do you agree with the approach to assessing harm? Are there any factors you think should be removed or included?

Sentencing should take account of the inherent difficulties in proving VAWG allegations and the barriers to justice for victims of domestic abuse and sexual violence who are accused of offending, as outlined above.

Question 3: Do you agree with the proposed sentence table for this offence? If not, please tell us why.

The table provides that the category range for all but the very least serious cases requires the use of custody. We believe there should be scope for community orders within all the Category 3 cases, particularly where there is evidence that the defendant is a victim of VAWG.

Question 4: Do you agree with the proposed aggravating and mitigating factors?

One of the aggravating factors listed is that the offence was committed under the influence of alcohol/drugs. It is not uncommon for victims of domestic abuse and other forms of VAWG to use alcohol and drugs as a coping mechanism, and for abusers to exploit their victim's substance dependence as part of their method of control and coercion. The guidelines should allow for these circumstances to be taken into account and to avoid the application of this as an aggravating factor in such cases.

The proposed mitigating factors include:

- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction.
- Mental disorder or learning disability (where not taken into account at step one).

A further mitigating factor should be added, 'The offender was subject to coercive and controlling behaviour/experiencing domestic abuse at the time of the offence'.

Question 10: do you have any other comments on this guideline?

We have been unable to obtain data to distinguish sentencing for different types of PCJ offence in these cases. We recommend that the Sentencing Council should explore such data in order to understand better how sentences are currently imposed for the very different circumstances of such offending. There is a world of difference between PCJ for interference with juries or witness intimidation, for example, where there may be a clear intent to undermine the justice system, and a case where a vulnerable individual is convicted for making a false allegation or is coerced into assisting a dangerous offender.

Equality and Diversity

Questions 11-13: equality and diversity, and sentencing disparities

Women are much more likely than men to be victims of domestic abuse and other forms of VAWG and exploitation that could lead to them being convicted of a PCJ offence. Black, Asian, minoritised and migrant women, as well as disabled women – including those with mental health needs, face additional barriers to accessing support and accessing justice in these cases. Young women and girls have distinct experiences that are often overlooked. The guidelines must be amended to address

these matters specifically, to help ensure equal treatment in relation to race, gender, disability and age.

In their Tackling Double Disadvantage 10-point Action Plan, Hibiscus Initiatives describe the ways in which intersectional discrimination and the interaction of criminal justice and immigration proceedings lead to additional disadvantage for Black, Asian, minoritised and migrant women in contact with the criminal justice system, and action that needs to be taken.³³ These matters are explored in relation to victims of VAWG who are accused of offending, in our Double Standard report and in Pragna Patel's appendix to our report on women who kill their abuser.³⁴

Research by Agenda and the Alliance for Youth Justice (AYJ) reveals how young women and girls' experiences of violence, abuse and exploitation can drive them into the criminal justice system, where they find themselves punished for survival strategies and their response to trauma, and have limited access to specialist support despite extreme levels of need.³⁵

Research by the Prison Reform Trust with Keyring drew on the experiences of 24 women with learning disabilities in contact with, or on the edges of, the criminal justice system; and practitioners working within criminal justice, social care, and women's services.³⁶ It found that abuse by men lay behind the offending behaviour of most of the participating women.

Additional guidance should be introduced for sentencers, with accompanying training, for reference in any case involving a defendant who is a victim of domestic abuse or another form of VAWG or exploitation, or where this has been alleged. This guidance should include information about the dynamics of domestic abuse, sexual violence and exploitation and the impact this can have on victims, including the impact on mental health and substance use. It should explain how this can contribute to offending and guard against reliance on myths and stereotypes regarding the behaviour of victims of VAWG. The guidance should be developed in consultation with specialist domestic abuse and sexual violence services, including those led by and for Black, Asian, minoritised and migrant women, disabled women, and young women and girls. This guidance and training should be used by sentencers to help inform their interpretation of sentencing guidelines for any offence, in relation to such defendants.

³³ [Hibiscus Initiatives \(2022\) Tackling Double Disadvantage: Ending inequality for Black, Asian, minoritised and migrant women – 10-point action plan for change](#)

³⁴ Ops. Cit. fn 2 and 3

³⁵ [Agenda & Alliance for Youth Justice \(2021\) 'I wanted to be heard': Young women in the criminal justice system at risk of violence, abuse and exploitation](#)

³⁶ [Prison Reform Trust \(2019\) Out of the Shadows: Women with learning disabilities in contact with or on the edges of the criminal justice system](#)