



## **Home Office Violence Against Women and Girls (VAWG) Strategy 2021-2024: Call for evidence**

**Submission by the Centre for Women's Justice:**

### **Section 4 - ending the unjust criminalisation of survivors of domestic abuse and other forms of VAWG**

**19 February 2021**

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## **Introduction**

### **About the Centre for Women's Justice (CWJ)**

1. 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 closely with frontline women's sector organisations on identifying and finding legal tools to challenge police and prosecution failings around VAWG.

2. 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. Through our legal advice and casework service, we also 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.

### **About this response**

3. This is Section 4 of the CWJ's response to the call for evidence. Sections 1-3 are contained in a separate document with appendices. Here in Section 4, we specifically focus on the evidence of unjust criminalisation of survivors for alleged offending resulting from their experience of VAWG, and the need for new statutory defences and improvements in policy and practice to address this. Relevant case examples are included in Appendix 1, taken from CWJ's own caseload and other sources.
4. CWJ recently undertook a major piece of research considering the barriers to justice for women who kill their abuser, which was published in February 2021 and can be downloaded [here](#).<sup>1</sup> 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. The evidence and recommendations in the full report form part of this response. The report's conclusions and recommendations are reproduced for ease of reference in Appendix 2.
5. As well as focusing on the criminalisation of women who are victims of domestic abuse, this response also draws attention to women's criminalisation as a result of other forms of VAWG. This includes information about our work to challenge the disclosure, recording and retention of criminal records arising from sexual exploitation for offences that would now benefit from a defence under the Modern Slavery Act 2015.

### **Executive summary**

#### **Proposed vision to be achieved by 2024**

6. In light of the evidence set out in this response and those by other expert organisations including Appeal, Women in Prison and Agenda, we call on the government to ensure that the VAWG strategy for 2021-2024 explicitly acknowledges the role of public services in ensuring survivors of VAWG are not unjustly criminalised in relation to alleged offending which results from their experience of VAWG, and that it adopts the following aims as part of the government's vision to be achieved by 2024:
  - (a) To end the unjust criminalisation of survivors involved in alleged offending resulting from their experience of VAWG by adopting necessary reforms in both law and practice.

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<sup>1</sup> [Centre for Women's Justice \(2021\) Women who kill: how the state criminalises women we might otherwise be burying](#)

- (b) To ensure that survivors involved in alleged offending are identified as survivors at the earliest possible stage in proceedings, and that they are protected from abuse and not stigmatised.
- (c) To ensure that decisions to arrest or prosecute survivors - and the conduct of all public services throughout criminal proceedings against survivors as suspects and defendants - uphold survivors' rights as victims, take full account of the abuse they have suffered and its relationship to any alleged offending, and serve the public interest.
- (d) To provide a mechanism for those with criminal records for crimes committed as a consequence of coercion and abuse to expunge these records, or at least have them filtered from mandatory disclosure under the disclosure and barring scheme.

### **Proposed action plan**

7. We summarise below the actions we recommend should be included as commitments in the VAWG strategy in order to achieve the above aims. These are set out more fully on page 19 below and in Appendix 2:<sup>2</sup>
  - (a) Reforms to services and systems that play a key role in preventing and tackling violence against women, including housing, health and social care, welfare, the family courts, and specialist community services.
  - (b) A public education programme aimed at improving understanding of VAWG as a cause of women and girls ending up as suspects and defendants in the criminal justice system. This must include specialist training for practitioners in key services including the police, the Crown Prosecution Service (CPS), legal services, the judiciary, and social care.
  - (c) Training and changes in the culture and practice of the criminal justice agencies that play a key role in responding to such cases, including the police, the CPS, the judiciary, and the Parole Board. This must include close work with community agencies with expertise in violence against women and girls, including organisations led by and for women in minority groups.
  - (d) Specific reforms to the court process to support women defendants who are survivors of abuse, including: measures to support women to explore experiences of domestic abuse in court; measures to address memory issues, counter-allegations, and myths and stereotypes; and measures to support the effective use of expert witnesses.
  - (e) Reforms to the appeal process, including the Criminal Cases Review Commission and the appeal courts.
  - (f) Reform of sentencing tariffs and guidelines that recognises women's experiences of VAWG.
  - (g) Legislative reform, including: extending the provisions of the 'householder defence' to women who use force against their abuser;<sup>3</sup> and introducing a new statutory defence

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

<sup>3</sup> [Centre for Women's Justice \(2020\) Domestic Abuse Bill – legal protection for survivors who offend due to domestic abuse](#)

for survivors of domestic abuse compelled to offend, modelled on section 45 of the Modern Slavery Act 2015.

We also endorse the actions recommended in the responses to this call for evidence by Agenda, Appeal and Women in Prison, and the recommendations made in the Prison Reform Trust's (PRT) 2018 report 'There's a reason we're in trouble', as detailed on page 19 below.

## International law

8. In setting out its commitment to upholding the rights of survivors involved in alleged offending, the strategy should refer to the international legal framework. This includes the provisions of the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules), to which the United Kingdom is a signatory.<sup>4</sup> These Rules require the government to ensure that women in the criminal justice system who have experienced violence are identified, treated appropriately and receive the right support, and that their experience taken into account in sentencing decisions.
9. The Bangkok Rules require sufficient resources to be available for suitable community alternatives to custody, and the UN Special Rapporteur on Violence Against Women recommended in 2015 that the UK government should "ensure that women's histories of victimization and abuse are taken into consideration when making decisions about incarceration, especially for non-violent crimes".<sup>5</sup> Also of relevance are the provisions of Convention on the Elimination of all forms of Discrimination against Women<sup>6</sup> and the Istanbul Convention<sup>7</sup>.
10. Despite these legal safeguards, it nonetheless remains common practice for limited, if any, consideration to be given to women suspects' and defendants' experiences of VAWG in criminal justice proceedings. In many cases, the abuse will not even be disclosed until late on in proceedings, or indeed until after women have been convicted and sentenced.<sup>8 9</sup> The VAWG strategy for 2021-2024 must make a clear commitment to putting this right.

## Evidence of the unjust criminalisation of survivors of domestic abuse and other forms of VAWG

11. At least 57% of women in prison and under community supervision in England and Wales are victims of domestic abuse.<sup>10</sup> Research by PRT and others has shown how

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<sup>4</sup> [The United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders \(the Bangkok Rules\)](#)

<sup>5</sup> Office of the High Commissioner for Human Rights (Manjoo, R. (2014) Special Rapporteur on Violence Against Women country mission

<sup>6</sup> See the recommendations of the CEDAW committee's March 2019 Concluding Observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland relating to resourcing of the Female Offender Strategy and protection of women from gender-based violence. ([CEDAW/C/GBR/CO/8](#))

<sup>7</sup> [The Council of Europe Convention on preventing and combating violence against women and domestic violence](#)

<sup>8</sup> Sakande, N. (2019) [Righting Wrongs: What Are the Barriers Faced by Women Seeking to Overturn Unsafe Convictions or Unfair Sentences in the Court of Appeal](#) (Criminal Division)

<sup>9</sup> Centre for Women's Justice (2021) [Women who kill: how the state criminalises women we might otherwise be burying](#)

<sup>10</sup> Ministry of Justice (2018) Female Offender Strategy, London: MoJ. This is likely to be an underestimate because many women fear disclosing abuse. (Gelsthorpe, L., Sharpe, G., and Roberts, J. (2007) Provision for Women offenders in the community London: Fawcett Society)

women's offending is often directly linked to their own experience of domestic abuse.<sup>11</sup> Our own casework reveals how survivors can also be criminalised as a result of their experience of other forms of VAWG (see paragraph 14 below and Appendix 1).

12. Sally Challen's successful appeal against her murder conviction in 2019 highlighted the devastating impact of coercive relationships and the lack of legal protection for survivors of domestic abuse who are driven to offend.<sup>12</sup> However, while there is some public recognition of the links between domestic abuse and women's offending, this has not yet translated into changes in practice on the ground, and true understanding of these links remains limited for many people. The links between women's offending and their experience of other forms of VAWG is even less well understood. The strategy could helpfully provide examples to illustrate these links and encourage better understanding in this area. The wide range of offences which can result from women's experience of domestic abuse has been highlighted in research by PRT, including:<sup>13</sup>

- Handling stolen goods under threat of violence by a partner.
- Possession of a controlled substance belonging to an abusive partner.
- Use of force against an abusive partner or ex-partner.
- Failure to ensure school attendance for fear of meeting abusive ex-partner.

Relevant case examples are included in Appendix 1.

13. Our own case work has made us aware of disturbing inconsistencies in practice by the Police and CPS when deciding whether to arrest or pursue charges against survivors alleged to have offended in the context of domestic abuse and other forms of VAWG and exploitation, or indeed whether to threaten prosecution. This inconsistency is implicitly recognised in paragraph 107 of the draft statutory guidance to accompany the Domestic Abuse Bill.
14. Based on referrals received by CWJ for legal advice in the last two years, we have identified the following broad types of case in which survivors have been accused of offences resulting from their experience of domestic abuse, other forms of VAWG and exploitation. Some examples are provided in Appendix 1:
- (a) **Counter-allegations/self-defence:** A number of our referrals involve the familiar scenario in which a survivor has been accused of an assault offence where they were in fact acting in self-defence against their abuser and/or in reaction to abuse, and/or where their abuser's account of events is preferred to theirs. (See cases of Trish, Eva, Victoria, Martha, Rose and Yasmin, Appendix 1 – some of these come from sources other than CWJ, as indicated.)

College of Policing Authorised Professional Practice (APP) includes helpful guidance on identifying the primary perpetrator in the event of counter-allegations,<sup>14</sup> with a

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<sup>11</sup> [Prison Reform Trust \(2017\) There's a reason we're in trouble: Domestic abuse as a driver to women's offending, London: PRT](#)

<sup>12</sup> Challen, D. (2019) 'My mother, Sally Challen, was branded a cold-blooded killer. At last, she has justice', The Guardian, available at <http://bit.ly/SallyChallen>

<sup>13</sup> See: [Prison Reform Trust \(2017\) There's a reason we're in trouble: Domestic abuse as a driver to women's offending, London: PRT and Criminal Bar Association of England and Wales \(2017\) Defences available for women defendants who are victims/survivors of domestic abuse, London: CBA](#)

<sup>14</sup> Available at the following link – see para 3.5: <https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/domestic-abuse/first-response/#determining-the-primary-perpetrator-and-dealing-with-counter-allegations>

linked section on dual arrests providing: ‘Officers should avoid dual arrests, especially if there are children present, but this is not always possible.’ Documents provided to CWJ by some police forces in response to Freedom of Information Act requests indicate that local police force guidance is inconsistent in relation to counter-allegations and dual arrest. While some forces - such as the Metropolitan Police Service - have helpful guidance in place, other force guidance runs contrary to the APP provisions and many police forces do not address the issue in their policies and procedures on domestic abuse.

CPS legal guidance on domestic abuse also includes a helpful section on self-defence and counter-allegations.<sup>15</sup> However despite the existence of these guidance documents, the referrals we have received make clear that practice on the ground is inconsistent to say the least.

Counter-allegations may also be made against a woman who has made allegations of sexual assault or rape. (See the case of Emma, Appendix 1.)

- (b) **Offending under coercion/duress:** We have received a number of referrals concerning survivors whose alleged offence took place under duress/coercion from their abuser. We are also aware of anecdotal reports from other sources of alleged offending taking place under duress of circumstance, for example where financial abuse leads women to shoplift for essential items. As has been set out elsewhere by both PRT and CWJ, and explained below, current defences in these circumstances are ineffective.<sup>16</sup> However, in many cases public interest considerations could nonetheless properly lead to a decision not to prosecute or to divert from the criminal justice system. In practice, all too often, this does not occur. (See cases of Kerry, Anna and Lara, Appendix 1 – which come from sources other than CWJ as indicated.)
- (c) **Allegedly false allegations:** CPS guidance is available for cases in which prosecution is being considered in relation to apparently false allegations of rape and other sexual offences. 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.’<sup>17</sup> However referrals we have received suggest this guidance is not consistently followed in practice. A number of our referrals involve cases in which a survivor has been prosecuted or threatened with prosecution for wasting police time or perverting the course of justice, having made allegations of abuse or sexual assault which have not been believed.

There are many reasons why such allegations 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.

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<sup>15</sup> Available at: <https://www.cps.gov.uk/legal-guidance/domestic-abuse-guidelines-prosecutors>

<sup>16</sup> See for example: [Prison Reform Trust \(2017\) There’s a reason we’re in trouble: Domestic abuse as a driver to women’s offending](#), London: PRT and Criminal Bar Association of England and Wales (2017) [Defences available for women defendants who are victims/survivors of domestic abuse](#), London: CBA; [Centre for Women’s Justice \(2021\) Domestic Abuse Bill - legal protection for survivors who offend due to abuse](#)

<sup>17</sup> Available at: <https://www.cps.gov.uk/legal-guidance/false-allegations-rape-and-or-domestic-abuse-see-guidance-charging-perverting-course>



However, 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. Doing so inevitably has a dampening effect on survivors' willingness to come forward. In at least one case known to us, the threat of prosecution has led a survivor to withdraw allegations she had made in good faith. (See the case of Edie, Appendix 1.)

- (d) **Police officer perpetrators of domestic abuse:** We continue to be made aware of cases in which a police officer perpetrator appears to have abused his powers or contacts within the police in order to criminalise the survivor. These cases should be seen in the wider context of failures by forces to properly investigate allegations made against their officers. This is the subject of a super-complaint by CWJ, submitted in March 2020 and currently under consideration.<sup>18</sup> (See the cases of Debbie, Maya and Margaret, Appendix 1.)
- (e) **Survivors added to an indictment to help secure conviction of perpetrator:** We are aware of cases in which survivors of grooming and sexual exploitation have either been charged or added to an indictment as co-conspirators, in an apparent attempt to increase the chances of securing a conviction against their perpetrator. This is despite having previously been assured that they would be treated as a victim or witness.
- (f) **Criminalisation resulting from childhood sexual or criminal exploitation:** CWJ has been supporting and promoting a successful legal challenge brought by our director, of the operation of the disclosure and barring scheme with respect to women who were prostituted as teenagers and acquired numerous criminal convictions for soliciting and loitering.<sup>19</sup> This year our director represented the same women in an ultimately unsuccessful case to challenge the retention of their criminal records until they reach the age of 100 years.<sup>20</sup>

We have established a project at CWJ to assist other women affected by their historic criminalisation that resulted in the continued retention and disclosure of criminal records that had resulted from their sexual and criminal exploitation. While such offences are now very rarely prosecuted due to changes in policing guidance and the introduction of a new defence under the Modern Slavery Act 2015, the long-term negative impact of a criminal record endures as an injustice and hardship for women who should instead receive protection as victims and survivors.

Whilst the focus of our work has been primarily on criminal convictions for prostitution type offences, the impact of the retention and disclosure of criminal records arising from coercion in domestic abuse is also very damaging and should benefit from a mechanism to remove those records, which are essentially a record of abuse

## **The government's response to date and shift needed in this VAWG strategy**

15. The government recognises the links between domestic abuse and women's offending and wishes *'to help female offenders and women at risk of offending to identify their abuse earlier and receive the support that they need to reduce their*

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<sup>18</sup> [HM Inspectorate of Police and Fire & Rescue Services \(2020\) Police super-complaints: force response to police perpetrated domestic abuse](#)

<sup>19</sup> R (QSA & ors) v Secretary of State for the Home Department [2018] EWHC 639 (Admin)

<sup>20</sup> See CWJ press release, 18 January 2021: ['Women prostituted as teenagers to challenge the retention of their criminal records till they reach 100 years'](#)

*chances of reoffending*'.<sup>21</sup> In response to research showing that 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,<sup>22</sup> the Lord Chancellor and Secretary of State for Justice stated that he wants 'to do more'.<sup>23</sup>

16. The government's VAWG strategy for 2016-2020 makes brief mention of 'female offenders' in the Executive Summary, in relation to provision of services (ensuring they are not excluded from service provision) and then briefly again in Chapter 4: Pursuing Perpetrators.<sup>24</sup> Two action points result for the National Offender Management Service (now HM Prisons and Probation Service) to '*support female offenders who are victims of violence and abuse to receive the interventions they need to stop offending and move into recovery for example by considering the models under development in Greater Manchester, Wales and London [the whole system approach to female offending]*' and to '*roll out a new helpline for female offenders who have been victims of violence or abuse so that they can obtain support while in custody and on release following the pilot helpline delivered at HMP Holloway*' (action points 80 and 81, both marked as 'ongoing to 2020').
17. The government has advocated a whole system approach to women's offending through its 2018 Female Offender Strategy<sup>25</sup> and accompanying guidance<sup>26</sup>, and the cross-government concordat on women in the criminal justice system published in January 2021<sup>27</sup>. All these documents, as well as the Victims' Strategy published in 2018,<sup>28</sup> make reference to the links between women's offending and their experience of domestic abuse and the need for survivors involved in offending to be identified as survivors and to receive support. Some limited investment has been made in services specifically aimed at women involved in offending who are survivors of domestic abuse. Significantly greater investment is needed to make sure adequate services are available throughout the country.<sup>29</sup>
18. The government's 2019 domestic abuse consultation response specifically acknowledges coercive control as a cause of women's offending.<sup>30</sup> Successive police inspectorate reports and police and CPS guidance all acknowledge the ongoing challenge faced by the police and prosecutors in dealing with counter-allegations and identifying the primary aggressor. However the government has not yet shown the necessary leadership to address decisively the risk of unjust criminalisation that is faced by survivors of all forms of VAWG, and the responsibility of public service agencies to ensure they are protected from this risk. This contrasts with the government's recognition – quite rightly - that victims of trafficking should not be penalised for alleged offending that results from their exploitation (subject to some exceptions), and the introduction of legislation and a surrounding policy framework to achieve this.

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<sup>21</sup> HM Government (2019) Transforming the response to domestic abuse: Consultation response and draft Bill. See also: Ministry of Justice (2018) Female Offender Strategy, London: Ministry of Justice

<sup>22</sup> [The Disabilities Trust \(2019\) Making the link: Female offending and brain injury](#), London: The Disabilities Trust

<sup>23</sup> Full debate available at: <https://hansard.parliament.uk/commons/2019-10-02/debates/C3488538-CFEC-4670-9299-732672E2BE67/DomesticAbuseBill>

<sup>24</sup> [HM Government \(2016\) Violence against women and girls strategy 2016-2020](#)

<sup>25</sup> [Ministry of Justice \(2018\) Female Offender Strategy](#)

<sup>26</sup> Ministry of Justice (2018) Managing vulnerability: Women – Fact Pack, London: MoJ; Ministry of Justice (2018) A Whole System Approach for Female Offenders: Emerging evidence, London: MoJ. Both available at: <https://www.gov.uk/government/publications/female-offender-strategy>

<sup>27</sup> [Ministry of Justice \(2021\) Concordat on Women in or at risk of contact with the Criminal Justice System](#)

<sup>28</sup> [HM Government \(2018\) Victims Strategy](#)

<sup>29</sup> [UK Women's Budget Group \(2020\) The Case for Sustainable Funding for Women's Centres](#)

<sup>30</sup> [HM Government \(2019\) Transforming the Response to Domestic Abuse Consultation Response and Draft Bill](#)



19. The government has so far rejected the need for any legislative reform to provide effective defences for survivors of domestic abuse who are driven to offend, while on the other hand expressing the hope that the law will evolve through caselaw to ‘be more flexible’. We hope the government will be persuaded to introduce new statutory defences through the Domestic Abuse Bill, as we have proposed. If this not happen, the VAWG strategy for 2021-2024 must set out how the specific steps the government will take to keep the need for legislation under review. There is also much that can and must be done outside of legislation, to achieve improvements in practice by all criminal justice agencies in order to ensure survivors are not unjustly criminalized. The new VAWG strategy is a critical opportunity to set out expectations and practical measures – including allocation of resources - to address this decisively.

### **Proposed new statutory defences for offending driven by domestic abuse**

20. Current legal defences do not protect survivors of domestic abuse from prosecution or conviction when they are driven to offend. As well as challenging inappropriate prosecutions in individual cases, we have called for a new statutory defence and an amendment to the law on self-defence to be added to the Domestic Abuse Bill<sup>31</sup> for those whose offending is driven by their experience of domestic abuse<sup>32</sup>. This would address gaps in legal protection for survivors, strengthen recognition of the links between victimisation and offending and deter inappropriate prosecutions. We have also called for a comprehensive, cross-government policy framework to be introduced to protect survivors in these circumstances and ensure the public interest is served, drawing on learning from equivalent work to protect victims of trafficking who are suspects or defendants in criminal proceedings. Supporters of the proposals include the Designate Domestic Abuse Commissioner, the Victims’ Commissioner, the Criminal Bar Association, Women’s Aid, PRT and others.<sup>33</sup> The proposals are currently opposed by the government, which has however committed to monitoring the effectiveness of existing defences and keeping under review the need for statutory reform.

#### **Summary of proposals**

21. We have proposed that two new Clauses and a new Schedule should be added to the Domestic Abuse Bill:<sup>34</sup>
- (a) A new clause amending the law on self-defence, modelled on the provisions for householders in Section 76 of the Criminal Justice and Immigration Act 2008. This would allow survivors acting in self-defence against their abuser the same protection as householders defending themselves against an intruder (the ‘self-defence proposal’).
  - (b) A new clause and schedule introducing a statutory defence for survivors, modelled on Section 45 of the Modern Slavery Act 2015. This would give survivors of

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<sup>31</sup> These proposals were developed by PRT in collaboration with CWJ and others, as part of PRT’s Transforming Lives programme to reduce women’s imprisonment. Since that programme ended in November 2020, CWJ have taken over the lead on this work by agreement with PRT.

<sup>32</sup> For more information go to: [www.centreforwomensjustice.org.uk/dabill](http://www.centreforwomensjustice.org.uk/dabill)

<sup>33</sup> For a list of supporters go to [www.centreforwomensjustice.org.uk/dabill](http://www.centreforwomensjustice.org.uk/dabill)

<sup>34</sup> The provisions were developed with the assistance of Paramjit Ahluwalia of Lamb Building; Clare Wade QC of Garden Court Chambers and Harriet Wistrich of the Centre for Women’s Justice, who together represented Sally Challen in the Court of Appeal; Dame Vera Baird DBE QC, the Victims’ Commissioner; Naima Sakande of Appeal; Olive Craig of Rights of Women and other experts.

domestic abuse similar protection to victims of trafficking who are compelled to offend (the 'Section 45 proposal').

These provisions are based on legal precedents in place to protect other groups and are not gender specific.

22. Whereas victims of trafficking rightly have a statutory defence to protect them from prosecution where they have been compelled to offend as part of their exploitation, there is no equivalent defence available for victims/survivors of domestic abuse. And whereas householders have legal protection where they act in self defence against an intruder, no such protection is available to victims/survivors acting in self-defence against their abuser. Common law defences are outdated and ill-fitting to the context of domestic abuse, leaving survivors with no effective defence. The Domestic Abuse Bill presents an ideal opportunity to modernise the law by ensuring the available legal defences reflect improved public understanding of domestic abuse.
23. These provisions should be accompanied by a comprehensive cross-government policy framework to aid implementation, drawing on existing policies in place to support Section 45 and the householders' defence. This should include provision of support for survivors and special measures to protect vulnerable defendants. Statutory guidance, training for criminal justice agencies and judicial directions would also be required. The legislation and surrounding framework would have the significant added benefit of encouraging earlier disclosure of abuse<sup>35</sup> and access to support, and helping to break the cycle of victimisation and offending.

#### **Inadequacy of the law on self-defence**

##### **Case study - Ioanna<sup>36</sup>**

Ioanna was convicted for attacking her abusive partner with a knife, having been subject to long-term coercion and control by him. When he became threatening during an argument at home, she grabbed a knife lying nearby in the kitchen and raised it towards him. He tried to catch the knife and in the process received a small cut on his finger. He contacted the police. Ioanna received a community order.

24. The common law defence of self-defence is very difficult to establish in cases of violent resistance by a survivor of domestic abuse against their abusive partner or former partner, where a jury may well conclude that the response was disproportionate without taking account of the long history of abuse. Research by CWJ shows that women who kill their abusers are rarely successful in relying on self-defence.<sup>37</sup> We found that in most cases where women kill abusive men, they use a weapon in contrast to a significant proportion of cases where men kill partners with their bare hands. This is almost certainly due to their smaller physical size as well as their knowledge of the violence of which their abuser is capable. The self-defence proposal would make it easier for victims/survivors to establish they were acting in self-defence, providing them with equivalent protection to those using force against an intruder in their home.
25. It is also worth noting here that sentencing guidelines, which identify the use of a weapon as an aggravating circumstance where the woman is convicted, fail to take

<sup>35</sup> For evidence of women defendants' non-disclosure of abuse, and the negative implications of this for their case, see: [Sakande, N. \(2020\) Righting Wrongs: What are the barriers faced by women seeking to overturn unsafe convictions or unfair sentences in the Court of Appeal \(Criminal Division\)](#)

<sup>36</sup> Case study provided by Women in Prison. Ioanna is not her real name.

<sup>37</sup> Centre for Women's Justice (2021) [Women who kill: how the state criminalises women we might otherwise be burying](#)

into account the discriminatory impact of this on abused women who are more likely to use a weapon in the context of domestic abuse.

## Duress

26. The Section 45 proposal is intended to overcome the inadequacies in the common law defence of duress for survivors of domestic abuse, and provide equivalent protection to victims of trafficking. The same exclusions would apply.
27. The defence of duress can be applied (other than for murder) where the defendant was acting under threat of imminent death or serious injury and where there would have been no alternative course of action for a reasonable person with relevant characteristics.<sup>38</sup> As illustrated in the case of YS below, the legal test for duress is ill suited in domestic abuse cases because:<sup>39</sup>
  - (a) The complexities of domestic abuse are ignored, as the emphasis of the definition of duress is on threat of death or serious injury. The defence does not recognise psychological, sexual or financial abuse.
  - (b) For the defence of duress to succeed, the threat of physical harm must be imminent. This fails to recognise the nature of domestic abuse, including coercive control, as *'typically entrenched, unpredictable and random...to a woman whose self esteem has been demolished by past violence, the fear of violence may be ever present and overpowering'*.<sup>40</sup>
  - (c) For those experiencing abuse to succeed with a duress defence, 'relevant characteristics' must be established including 'battered woman syndrome' and 'learned helplessness'. These are outdated concepts which pathologise women rather than offering an effective defence suitable for the actual circumstances. They require the production of medical evidence which is not practicable in many cases involving low level offending tried in the magistrates' courts.

### YS<sup>41</sup>

YS is charged with driving whilst disqualified, driving with excess alcohol, driving without insurance and dangerous driving. An officer noticed a vehicle with its brake lights permanently illuminated and swerving from side to side. He activated the siren, indicating for the vehicle to stop. The vehicle did not stop, and a chase continued for five minutes. In the driving seat was a woman, YS.

YS explained she had been dragged from her home partially dressed by her partner, forced to drive, and that he threatened to kill her if she did not drive on. The partner was screaming at her throughout, punching her in the ribs and trying to grab the steering wheel.

<sup>38</sup> R v Bowen 1996 2 Cr App R 157

<sup>39</sup> [Criminal Bar Association of England and Wales \(2017\) Defences available for women defendants who are victims/survivors of domestic abuse, London: CBA. See also: Loveless, J. \(2010\) 'Domestic Violence, Coercion and Duress', Criminal Law Review, pages 93-108](#)

<sup>40</sup> Loveless, J. (2010) 'Domestic Violence, Coercion and Duress', Criminal Law Review, pages 93-108

<sup>41</sup> Case study provided by Paramjit Ahluwalia of Lamb Building, taken from factual matrix within R v YS [2017] EWHC 2839

The police stop this vehicle and YS is prosecuted. Despite running duress, and despite her being viewed as credible, she is convicted (R v YS [2017] EWHC 2839). Her conviction was upheld on appeal to the High Court.

28. The government has so far opposed these proposals because it is not persuaded they are '*practical and proportionate*' and regards them as unnecessary in light of existing defences, but has provided no evidence in support of these arguments. The government argues that '*improved understanding and awareness of the nature of domestic abuse... will mean the existing defences are more able to respond flexibly and proportionately than a narrowly defined statutory defence*' and intends to '*monitor the use of the existing defences and keep under review the need for any statutory changes*'.<sup>42</sup> However, of 31 criminal defence lawyers responding to a recent survey by PRT, more than two-thirds believed that where offending results from domestic abuse, our self-defence proposal would provide a more effective defence than the current law; and three-quarters considered that our Section 45 proposal would be more effective in this context than the law of duress.<sup>43</sup>
29. The government has asked whether there is evidence of multiple cases in which defendants whose offence was attributable to domestic abuse have been convicted where they should have succeeded under a common law defence of duress. PRT collated examples of such cases in their 2018 report '[There's a reason we're in trouble](#)' and some of these appear in Appendix 1, together with examples from our own caseload and from other organisations. Further evidence is being submitted by others to this call for evidence. Developing a comprehensive body of evidence of this kind would require a major exercise, including monitoring of cases while they are ongoing. It is also likely that in many cases duress will not be raised at all because of the difficulty of establishing it, and defendants may enter an early guilty plea.
30. The proposals are closely modelled on provisions already in use for other vulnerable groups, illustrating that they have been found practicable and proportionate for those groups.

**How would the courts establish a nexus (or link) between the abuse and the criminal act, allowing the defence to apply?**

31. For the 'Section 45' proposal, establishing a nexus would work in the same way as it does under Section 45 of the Modern Slavery Act. The courts would need to determine on the facts whether victims/survivors were compelled to offend as part of, or as a direct consequence of, their experience of domestic abuse.
32. Under the self-defence proposal, the provisions set out in Section 76 of the Criminal Justice and Immigration Act 2008 would apply as they do currently for householders. This section applies in any case where a question arises whether the defendant is entitled to rely on self-defence, and whether the force used was reasonable in the circumstances. The latter question is decided by reference to the circumstances as

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<sup>42</sup> [HM Government \(2020\) Further Government Response to the Report from the Joint Committee on the Draft Domestic Abuse Bill, Session 2017-19 HL Paper 378 / HC 2075: Draft Domestic Abuse Bill, CP214, London: TSO](#)

<sup>43</sup> PRT conducted a short survey of criminal defence lawyers in Summer 2020 to seek their views on the adequacy of defences available to individuals who offend due to their experience of domestic abuse, including coercion. Further details are available from CWJ on request.

the defendant believed them to be. The reasonableness or otherwise of such a belief is relevant to the question whether the defendant genuinely held it.

33. In cases other than householder cases, the degree of force is not to be regarded as reasonable where it was disproportionate in the circumstances as the defendant believed them to be. In householder cases (and, we propose, in domestic abuse cases) the force used may still pass the reasonableness test if it is disproportionate, but not grossly disproportionate, in the circumstances as the defendant believed them to be. Under our proposal, where a defendant seeks to rely on the domestic abuse defence, evidence of the nature and extent of the alleged domestic abuse would inform the court's consideration of reasonableness, including proportionality.

### **Current failures to take into account the context of domestic abuse in criminal proceedings**

34. Current failures to take account of the context of domestic abuse in criminal proceedings against survivors are explained in some detail in paragraphs 41-51 below. Research by the Howard League for Penal Reform for the All Party Parliamentary Group on Women in the Penal System highlights the prevalence of arrests of women for violent offences committed in the context of domestic abuse, only for them later to be released without charge (in other words, cases in which they should not have been arrested at all).<sup>44</sup> Prosecution practices are inconsistent and may not follow CPS guidance. Where there is an inappropriate prosecution, defence solicitors under considerable pressure with limited resources may not argue for the case to be dropped. Such arrests and prosecutions result in statistics which may in turn give a distorted picture of male versus female victimisation, as noted in Section 3 of CWJ's response to the call for evidence. Further failings exist throughout the criminal justice process as detailed below.
35. By contrast, in cases involving defendants who are victims of trafficking, Section 45 and the surrounding policy framework requires proactive, early case management and allows all agencies to become more adept at recognising and responding to circumstances which should indicate there is no public interest in prosecuting a case, or where the statutory defence should apply. This means that magistrates, judges and legal advocates increasingly understand how exploitation in this context can lead to offending and are taking this into account.

### **Does improved understanding of abuse mean legislation is not needed?**

36. The Court of Appeal judgment in March 2019, overturning Sally Challen's conviction for murder, led to increased public recognition of the nature of coercive control and how it can drive offending by victims, and resulted in changes to the Equal Treatment Bench Book on coercive control. This was achieved because the court accepted fresh psychiatric evidence which investigated the impact of coercive control on Ms Challen.
37. The impact of the case may be more significant for serious cases than for lower level offences prosecuted in the Magistrates' Courts. In any event, improved understanding of the nature of domestic abuse and its impact on victims' behaviour will not of itself change the law. As CWJ's research notes, previous legal judgments which it was hoped would lead to a sea change in understanding – the watershed

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<sup>44</sup> [APPG on Women in the Penal System \(2020\) Arresting the entry of women into the criminal justice system: Briefing Two](#)



judgments in (and campaigns around) Ahluwalia, Thornton and Humphreys – did not in fact lead to significantly different outcomes for these sorts of cases. Whilst Challen was important there is nothing that gives us confidence it will lead to general improved practice moving forward. Legislation is needed to ensure the law reflects modern understanding of domestic abuse, making effective defences available in these cases.

### **Conclusion – why legislation is necessary**

38. During debate of the Domestic Abuse Bill in the House of Commons Public Bill Committee, the Home Office Minister Victoria Atkins MP argued against these proposals on behalf of the government. She suggested that existing defences are sufficient. Yet the CWJ, PRT and others have collated extensive evidence showing this not to be the case. She argued that existing checks and balances in the criminal justice system provide enough protection. Yet these are no substitute for an effective legal defence – and no use at all for the many victims/survivors who do not feel able to disclose abuse, as shown in Naima Sakande’s research. She argued that caselaw will evolve, as our understanding of domestic abuse improves. Yet waiting and hoping for this change to take place, to allow victims/survivors an effective defence at some time in the future, may take a generation.
39. The government has also referred to concerns that Section 45 is currently being abused. Practical proposals have been put forward by the Independent Anti-Slavery Commissioner and others to overcome these concerns. Both her review and the government-commissioned independent review published last year highlight the importance of ensuring we protect victims for whom the statutory defence was intended.<sup>45 46</sup> The implementation of our proposals should be informed by this learning. The challenges of implementation should not be seen as a reason to give up on protecting victims whom it is not in the public interest to prosecute. The existence of the defences would in fact be likely to uncover significantly more abuse and encourage prosecutions of perpetrators.
40. Having specific defences on the statute book as we have proposed would ensure that fewer women are prosecuted and convicted of offences when they should instead be receiving support to exit a frightening relationship. We hope the government will be persuaded of the need for legislative reform during the passage of the Bill, particularly following the publication of CWJ’s research on women who kill. If not, the VAWG strategy must set out in detail the steps already underway and planned for the future, in order to meet the government’s commitment to monitor the use of existing defences and review the need for legislation to introduce new defences.

### **Proposed improvements in policy and practice**

41. Even in the absence of new statutory defences, there is a clear potential for improvements in the response of statutory agencies both within and outside the criminal justice system to survivors who are involved in alleged offending, in order to address the shortfalls in practice outlined in this submission. The strategy is an essential tool to help achieve this, whether or not the government decides to introduce statutory defences.

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<sup>45</sup> [Home Office \(2019\) Independent review of the Modern Slavery Act 2015: Final Report](#)

<sup>46</sup> [Independent Anti-Slavery Commissioner \(2020\) The Modern Slavery Act 2015 statutory defence: A call for evidence](#)



## Police and prosecutors

42. Helpful Police and CPS guidance exists in relation to at least some of the case types referred to at paragraph 14 above. However, it is not being followed consistently. Indeed in many of the cases we have seen, the decision to proceed with a prosecution is entirely inconsistent with the CPS policy statements in respect of VAWG. Furthermore, in our experience, pre-trial representations to the CPS that it is not in the public interest to proceed with a prosecution are often refused without a substantive response to the issues raised. In such circumstances there is no legal avenue to challenge the decision to prosecute, other than to make submissions on abuse of process within the criminal proceedings. However the public interest considerations may not give rise to an abuse of process argument.
43. Where an alleged offence is committed in the context of domestic abuse and other forms of VAWG, we find that the extent to which this is taken into account depends on the individual prosecutor. In many cases women may plead guilty, not realising that their experience of domestic abuse could be a reason not to be prosecuted under the CPS's public interest test. Despite government guidance for the police and local agencies working with women in contact with the criminal justice system,<sup>47</sup> the police and CPS may not apply the public interest test properly even if the abuse is known about. Many criminal defence solicitors, working under pressure on fixed fees, do not make pre-trial representations on the application of the public interest test on behalf of their clients. There is often no consideration given to this aspect of the prosecution.
44. Domestic abuse training for police and prosecutors needs to address the public interest test. Although the police are not supposed to close cases themselves on the basis of the public interest test, they can gather and put forward evidence that is relevant to that, and it would be helpful for them to understand the bigger picture.
45. As highlighted in CWJ's recent research, there is also a need for training to address the fact that it is extremely difficult for most survivors of VAWG to speak about their abuse. This means that, even where the abuse is relevant to their alleged offending, disclosures may be limited initially, and survivors need to be given the space and opportunity to expand upon any abuse they mention. This is particularly necessary because the usual dynamic in the criminal justice process is that suspects put forward their accounts and claims to the best of their ability, and police and prosecutors treat these with scepticism. This is the reverse of the approach required to assist a survivor of abuse to open up and disclose abuse. Only a conscious process based on understanding of barriers to disclosing abuse can reverse the usual dynamic within the criminal justice process and provide the opportunity for survivors to provide accounts that shed light on their true circumstances. An approach modelled on the process followed in relation to potential victims of trafficking could address this.
46. Where counter-allegations arise, there is a need for detailed guidance for all police forces on how to establish who is the primary aggressor, similar to Metropolitan Police guidance currently in place. Many forces have nothing on this in their policies, and possibly also not in their training. Where police get it wrong and arrest the true victim this has significant long-term ramifications, even when the case against her is closed soon after. It means that in future she will not call the police and is left

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<sup>47</sup> Ministry of Justice (2018) Managing vulnerability: Women – Fact Pack, London: MoJ; Ministry of Justice (2018) A Whole System Approach for Female Offenders: Emerging evidence, London: MoJ. Both available at: <https://www.gov.uk/government/publications/female-offender-strategy>

effectively unprotected. Such arrests will remain on her record and may impact on other processes, such as the family courts.

47. We have referred above (para 34) to the Howard League's research showing the prevalence of arrests of women for violent offences committed in the context of domestic abuse, only for them later to be released without charge.<sup>48</sup> In some cases an arrest of a survivor, even where there is no remand in custody and the case is dropped some weeks later, can have far-reaching impacts on child custody decisions, housing and other aspects of a survivor's life following relationship breakdown.
48. In one case reported to CWJ by a frontline worker, where the woman was arrested instead of the man at the scene due to counter-allegations, she was put on bail conditions and had to stay in a refuge. The case against her was closed after a few weeks but in the meantime the children stayed with him in the family home and it then took her a year going through the family courts to get an order that they should live with her.
49. By contrast, in cases involving defendants who are victims of trafficking, Section 45 and the surrounding policy framework requires proactive, early case management and allows all agencies to become more adept at recognising and responding to circumstances which should indicate there is no public interest in prosecuting a case, or where the statutory defence should apply. This means that prosecutors, magistrates, judges and legal advocates increasingly understand how exploitation in this context can lead to offending and are taking this into account. This provides a helpful model which should inform the development of improved public service responses.
50. Defendants in cases where they are prosecuted for allegedly making a false allegation of rape or sexual violence, 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 prejudicial judgments. The absence of guidance on rape myths and stereotypes was recognised by the Court of Appeal in their judgment in *R v Beale*.<sup>49</sup>

### **Courts, sentencing, appeals and parole**

51. As CWJ's recent research highlights, there are multiple barriers throughout criminal justice proceedings which prevent women defendants' experiences of VAWG being taken properly into account. Although our research concerns the very small number of women who kill their abusers, its learning is relevant to the many other cases in which women's alleged offending is linked to their experience of domestic abuse and other forms of VAWG. These barriers include:
  - (a) Criminal defence lawyers' limited understanding of VAWG, including coercive control, and how this should inform the defence; and a lack of time, skills and resources

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<sup>48</sup> [APPG on Women in the Penal System \(2020\) Arresting the entry of women into the criminal justice system: Briefing Two](#)

<sup>49</sup> *R v Beale* [2017] EWCA 1012 (Crim)

which means defence lawyers fail to build trust, fail to enable full disclosure of abuse and fail to fully investigate the abusive context.

- (b) Late disclosure of abuse is common (partly as a result of the failings identified above), particularly in cases of coercive control. The problem of a victim identifying the perpetrator's behaviour as abusive and making a disclosure can be exacerbated for women from non-White backgrounds, where controlling, abusive and violent behaviours may intersect with other cultural factors, creating greater complexity and isolation for women.
- (c) Giving evidence in court is traumatic for many women and some may decline to do so, or stop giving evidence during trial, with highly negative consequences for their defence. Where women are able to disclose abuse, and where this is explored expertly in court, this leads to more positive outcomes. However, even where it is disclosed, it is often not explored effectively in court.
- (d) Judges' understanding of VAWG is crucial to the outcome of a case – including for instructing the jury, deciding what evidence is admissible, determining the sentence, and generally controlling the way a case is conducted – but it is often lacking.
- (e) In cases of women who kill their abuser, memory issues may arise due to traumatic amnesia or the effect of substances. In an adversarial legal system, the inability to remember crucial events can be construed as a strategy – namely, that women remember only what is useful to their case – and that the defendant is malingering. However, post traumatic stress disorder arising from previous violence can cause dissociation which leads to loss genuine of memory of traumatic moments
- (f) Counter-allegations of abuse are frequently used to discredit women defendants, although they may have been acting in self-defence. Police failings to identify the primary aggressor in domestic abuse incidents exacerbate this problem.
- (g) Commonly held myths and stereotypes about how a victim of abuse should behave are present in many cases and are believed not just by jurors, but by advocates and judges. Such stereotyping can be particularly harmful when combined with misconceptions based on class, race or culture.
- (h) The use of legal and illegal substances is a common coping strategy for women experiencing abuse or other forms of trauma.<sup>50</sup> This can be a factor both in women's presentation at trial and in relation to consideration of the context of the incident for which they face charges.
- (i) Further issues were identified in relation to:
  - Hierarchies of medical experts and reluctance to admit evidence from experts on VAWG or on the cultural context of abuse
  - Upward trends in sentencing of women who kill their abusers
  - Inadequacies in the appeal process for women whose offending resulted from abuse
  - Barriers to parole for women whose offending resulted from abuse
  - Rising levels of recall of women to prison and lack of appropriate community support.

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<sup>50</sup> Gezinski, L., Gonzalez-Pons, K. and Rogers, M. (2019) *Substance Use as a Coping Strategy for Survivors of Intimate Partner Violence: Implications for Safety and Service Accessibility*, Violence Against Women, pp1267–1285.

Women also face barriers to moving forward in their lives where they are left with a criminal record.

## **Proposed Vision for 2024 and Action Plan**

### **Proposed Vision for 2024**

52. This strategy should mark a starting point for developing a comprehensive legal and policy framework to support improved criminal justice responses to those involved in alleged offending resulting from their experience of domestic abuse and other forms of VAWG, with a view to ensuring they are protected from abuse and not stigmatised, that their rights are upheld, and that the public interest is served in decision making throughout the criminal justice process.
53. This work must be informed by close joint working with women's specialist services in the community, with specific consideration given to the additional challenges that can be faced by certain groups of women, including Black and minoritised women, foreign national women and those with disabilities. Training and guidance materials should be commissioned from specialist women's and Black and minoritised women's frontline services with expertise in gender-based violence. Learning should be drawn from models of good practice, such as London's domestic abuse courts, to develop specialist approaches with women defendants.<sup>51</sup> Helpful learning may also be drawn from training and guidance relating to the treatment of suspects and defendants who are potential victims of trafficking.<sup>52</sup>
54. In light of the evidence set out in this response and those from other expert organisations including Appeal, Women in Prison, Agenda and others, we call on the government to ensure that the VAWG strategy for 2021-2024 explicitly acknowledges the role of public services in ensuring survivors of VAWG are not unjustly criminalised in relation to alleged offending which results from their experience of VAWG, and that it adopts the following aims as part of the government's vision to be achieved by 2024:
  - (a) To end the unjust criminalisation of survivors involved in alleged offending resulting from their experience of VAWG by adopting necessary reforms in both law and practice.
  - (b) To ensure that survivors involved in alleged offending are identified as survivors at the earliest possible stage in proceedings, and that they are protected from abuse and not stigmatised.
  - (c) To ensure that decisions to arrest or prosecute survivors, and the conduct of all public services throughout criminal proceedings against survivors as suspects and defendants, uphold survivors' rights as victims, take full account of the abuse they have suffered and its relationship to any alleged offending, and serve the public interest.

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<sup>51</sup> [Advance \(2020\) A Place To Go Like This: breaking the cycle of harm for mothers involved in offending who are survivors of domestic abuse, and their children \(see recommendation 17, page 39: and appendix\)](#)

<sup>52</sup> See for example: College of Policing (2020) [Authorised Professional Practice – Major Investigation and Public Protection: Modern Slavery – Key Responsibilities](#)

- (d) To provide a mechanism for those with criminal records for crimes committed as a consequence of coercion and abuse to expunge these records or at least have them filtered from mandatory disclosure under the disclosure and barring scheme.

### **Proposed Action Plan**

- 55. Please refer to Appendix 2 for the detailed recommendations made in CWJ's recent research, for reforms throughout criminal proceedings. These are relevant not only to the small number of cases of women who kill their abuser, but also the many other cases in which women are alleged to offend in the context of domestic abuse and other forms of VAWG. All of these recommendations should form part of the government's action plan to end the unjust criminalisation of survivors of VAWG, as should our call for new statutory defences. We also endorse the actions set out in the responses to this call for evidence by Appeal, Women in Prison and Agenda. Further, as recommended by PRT in 2018, we agree that:<sup>53</sup>
  - (a) The police, prosecutors, probation services and the courts should adopt the practice of routine enquiry as to whether women's offending took place in the context of domestic abuse, at each stage of the criminal justice process, to ensure informed decision making. This work must be supported by training about barriers to disclosure. Resources must be provided to ensure a surrounding framework of available support is in place to protect survivors who make a disclosure.
  - (b) Police guidance and training must include a specific focus on the links between domestic abuse and some women's offending. Police forces should work with the CPS and local domestic abuse specialist services, and where possible enable co-location of domestic abuse specialists in police stations.
  - (c) Police triage and diversion schemes for women involved in low level offending should not automatically exclude women accused of domestic abuse offences, but instead should allow for a nuanced approach given the difficulties faced in identifying the primary aggressor.
  - (d) The CPS should work with specialist domestic abuse agencies to develop guidance, training and monitoring to ensure that women whose alleged offending may be driven by domestic abuse are identified, and that the public interest is applied appropriately when deciding whether to prosecute. The public interest may well be better served by their diversion into support services.
  - (e) The Judicial College should review the availability and effectiveness of information and training for the judiciary in this area, including judicial directions regarding the treatment of women defendants affected by domestic abuse.
  - (f) HM Prisons and Probation Service and Ministry of Justice should work with women's prison governors, probation services and community agencies to ensure that there are programmes of information and support funded for women affected by domestic abuse, including victim support services, both in prison and on release.
  - (g) The Ministry of Justice should work with the Ministry of Housing Communities and Local Government, local authorities and the voluntary sector to ensure that women

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<sup>53</sup> Prison Reform Trust (2018) There's a reason we're in trouble: Domestic abuse as a driver to women's offending

leaving prison are provided with safe accommodation with appropriate support, including specialist refuge accommodation where this is needed.

56. It is also essential for children's social care services and other statutory agencies to receive training and guidance to combat the unfair stigmatisation of survivors involved in alleged offending, particularly in relation to their care of, or contact with, their children. This has been the subject of recommendations in recent research by Advance<sup>54</sup> and in Lord Farmer's government-commissioned review of the importance of maintaining family relationships for women in the criminal justice system<sup>55</sup>.

## Conclusion

57. Government ministers have repeatedly expressed their ambition for the Domestic Abuse Bill to increase public understanding of domestic abuse and thereby help improve the experience of survivors accused of offending which results from their experience of abuse.<sup>56</sup> The strategy should reflect this ambition by giving the topic of criminalisation of survivors of domestic abuse and other forms of VAWG substantive coverage and setting out clearly the government's expectations for both improved awareness and resulting changes in practice.
58. The strategy must set out clear expectations for statutory agencies to improve their response to survivors involved in alleged offending and to offer resources to support improvements in practice. The strategy should explain how abuse and alleged offending can be linked. It should then set out what standards of practice are expected, and the principles on which these should be based. Guidance should also be offered on how improvements may be implemented. This content should be developed in consultation with lawyers and VAWG organisations with expertise in working with survivors, including those led by and for minority groups. This work should mark a starting point in developing a comprehensive, cross-government policy framework to improve practice in this area.

**For further information, contact Katy Swaine Williams (Consultant, CWJ):**

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<sup>54</sup> [Advance \(2020\) A Place To Go Like This: breaking the cycle of harm for mothers involved in offending who are survivors of domestic abuse, and their children \(see recommendation 17, page 39; and appendix\)](#)

<sup>55</sup> [Ministry of Justice \(2019\) The Importance of Strengthening Female Offenders' Family and other Relationships to Prevent Reoffending and Reduce Intergenerational Crime](#)

<sup>56</sup> [See for example the comments of Victoria Atkins MP during the Bill's Committee Stage debate in the House of Commons: Hansard, 17 June 2020, Column 471](#)



## Appendix 1 – Case examples and quotes

We are grateful to all the women who have generously consented to the sharing of their anonymised stories in order to encourage improvements in law and practice, and to the organisations and individuals who have helped gather these case examples.

### Self-defence cases

#### Trish

Extract from blog by Sarah Beresford (PRT), [published by Russell Webster](#) on 4 June 2020:

*Roxy\* (aged 16) knew this argument was different. "I'd heard my stepdad screaming and shouting at my mum loads of times before, and I knew he hit her, though we never spoke about it. But this felt really scary... I came downstairs, and he had her by the throat in the kitchen. It all happened really fast... I just remember mum picking up a frying pan and whacking my stepdad over the head with it." Neighbours called the police; Roxy's stepfather was taken to hospital with a serious head injury; and her mum, Trish, was charged with Assault occasioning Actual Bodily Harm which resulted in a 6-month custodial sentence. Her history of experiencing years of domestic abuse at the hands of her partner was not mentioned in the pre-sentence report; like many women, Trish had been afraid to disclose what was happening for fear that her three children would go into care. Roxy concluded, "I lost my mum twice over."*

\* All names have been changed.

#### Eva<sup>57</sup>

Eva was convicted of GBH in 2015 and sentenced to 8 months in prison. Eva (9 stones) says her then partner Mark (20 stones) had backed her into a corner and she threw a hairdryer at him. She had no previous convictions and had previously reported him for abuse. The investigation took six months before charge and Eva repeatedly wrote to police and MPs explaining it was self-defence. She wanted to press charges against Mark but was told she had to wait until after the trial. Her bruises were recorded by the booking in officer, but not photographed.

Prosecuting counsel claimed Eva was 'controlled and controlling', hence her appearing calm on the stand. Eva was an Ofsted inspector and describes herself as 'being used to giving hard messages calmly'. She is a refugee and 'used to talking about shocking events calmly'. The judge failed to direct the jury as to why bruises on an Asian woman would not show as clearly as if on a white person.

Eva complained to the IPCC, but they couldn't investigate until after her trial. Their subsequent investigation found some 'learnings'.

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<sup>57</sup> Case provided by Centre for Women's Justice. Name changed.

## **Victoria<sup>58</sup>**

Victoria was referred to the West Midlands' New Chance police diversion programme following a domestic incident. She had called the police during an altercation with her partner, and whilst she was on the telephone he claimed that Victoria had attacked him with a kitchen knife. The police attended; Victoria was arrested and given a Simple Caution. She was referred to New Chance as a voluntary client and her charge was NFA'd (No Further Action). Victoria attended her New Chance appointment and was identified as being a victim of sporadic domestic violence living in a very complex situation in a relationship that is not conducive to her emotional health or wellbeing. Additionally, she has no recourse to public funds and is an over stayer in the UK. Following Victoria's arrest, social services were alerted by the police and the children were placed on a Child in Need Plan. Victoria received support from a Women's Aid Independent Sexual Violence Advisor (ISVA) and counselling services, and New Chance offered practical and emotional support.

## **Martha<sup>59</sup>**

Martha met her partner when she came to Britain from another country. They were together for around two years and have three children together. Martha describes the relationship as difficult and unpredictable. Martha's partner was highly manipulative and would often disappear for days at a time, with no explanation for where he had gone or when he planned to come back. Martha became isolated from any form of community, as her partner would often tell her that people didn't like her and wouldn't want to hang out with her. She remembers being left alone with three young children and no friends or family in the country. The relationship was often violent but this was never reported as Martha would sometimes retaliate physically, and she felt that she had no right to tell the police.

Before she met her partner, Martha rarely consumed alcohol but she describes developing an alcohol addiction quite early on in the relationship. At first this was something they did together but it quickly became a way for her to cope in a relationship in which she was desperately unhappy.

Martha was convicted of GBH and given a two year suspended sentence after attacking her partner with a knife. She had never previously been in contact with the criminal justice system. The offence occurred after her partner was violent towards her and she wanted a way to get him to leave her alone. She called an ambulance, and they in turn called the police.

Following her index offence, Martha's children were returned to her and she still had some contact with her ex-partner, as he was involved with their children and was therefore allowed into her property when her brother was there. On one occasion, Martha's ex-partner became aggressive and she pushed him away, leading him to call the police and have her arrested. Although he did not press charges, the police still wanted to prosecute. As the victim was the same person as in Martha's index offence, the case has ended up at the crown court and Martha's suspended sentence may be activated.

The past few months have been extremely difficult for Martha, as she faces potentially being taken away from her children, despite her probation officer and social services advocating against that. The courts are not set up with a childcare provision which means that Martha has been faced with the option of either missing her court case or going to court with all her four children. She is currently awaiting her fifth court appearance for this offence as it has

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<sup>58</sup> Case provided by Black Country Women's Aid and included in PRT's 2018 report 'There's a reason we're in trouble'. All names have been changed.

<sup>59</sup> Case provided by Women in Prison. All names changed.

been adjourned a number of times mainly due to her ex-partner not showing up. Martha's support worker feels that she has been let down by the system at every stage, most recently with the police going ahead with prosecution with such limited understanding about her circumstances and the reasons that led to the event.

### **Commentary from Women in Prison (WiP)**

As an organisation WiP have worked with many women who have endured abuse over a significant time period, sometimes several years, progressively losing self-esteem and motivation, and finally standing up for themselves against an abusive partner. In many of these cases, women have themselves been charged as perpetrators of domestic abuse, with abusive partners pushing for harsh punishments as part of their pattern of coercion and control. In many cases there are no historic records of abuse as women have not wanted to report their partners to the police. To the police it can therefore seem at first impression that these are first-time incidents, and that any assault or abuse has been committed solely by the woman against a male partner, not the other way around.

### **Compulsion cases**

#### **Kerry<sup>60</sup>**

Kerry was referred to the Black Country Women's Aid Mariposa service as part of a community sentence, following a conviction for handling stolen goods. She had already been engaged with BCWA's domestic abuse support service for about three years. Incidents she had reported to them included verbal abuse and physical assaults, including one where Kerry was stabbed with a screwdriver.

Kerry had never been in trouble with the police before. She reported that her partner had threatened her with violence if she did not take the stolen goods to someone's home. She took this threat very seriously based on her past experience with this partner. On the way to the address she was caught by the police with the goods and arrested. She believed her partner had deliberately informed the police of her actions.

While attending Mariposa, Kerry completed the Changes Programme and the Healthy Relationships Programme. She did not have time to complete any further courses as her court order came to an end.

#### **Anna**

Anna was prosecuted for failure to secure the school attendance of her teenage daughter, Louise. She came to the Mariposa service as part of a community order. Anna had previous convictions for the same offence and was in the process of being prosecuted again when she attended the service. Anna had not engaged with school support and meetings, and Louise's school attendance had been consistently very poor. Punitive action by the courts had left Anna and her daughter distressed and afraid of the real possibility of Anna going to prison, added to which Louise continued to miss out on education.

On attending the service for the first time, Anna disclosed historic domestic violence which had been witnessed by her daughter. They had never called the police or informed the authorities for fear of repercussions. Louise had stopped attending school after an incident where she was followed home by the perpetrator of the abuse. What had been perceived by

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<sup>60</sup> Kerry and Anna's stories are summaries of case studies provided by Black Country Women's Aid and included in PRT's 2018 report 'There's a reason we're in trouble'. All names have been changed.

the school and local authority as obstruction and refusal to engage was in fact a response by Anna and Louise to their abuse and an attempt to protect themselves.

Anna and Louise were identified as being at high risk and immediate support was put in place. With the support provided to Louise through the MARAC, she disclosed that she had herself been abused by the same perpetrator. The perpetrator is now in prison for offences committed against Louise, who is attending college.

### **Lara<sup>61</sup>**

Lara was convicted of conspiracy to defraud in 2016 and sentenced to 6 years and 7 months. She had no previous criminal history. Lara struggled for years with abusive partners, drug and alcohol dependency and poor mental health. Her boyfriend at the time of the offence, later her co-defendant, came into her life as her drug dealer. He kept her high on cocaine and alcohol, dependent on his cash and belittled her daily. She attempted suicide 5 times and was sectioned twice. While she was in this vulnerable state, he ran a timeshare fraud scheme from her bank accounts. When she became aware of the fraud, she did nothing, as she was dependent on his supply of drugs.

When she found out he had been giving her 14-year-old daughter cannabis, it was the last straw and Lara called the police and told them about the fraud. Lara was arrested and later bailed to a women's refuge. She successfully completed rehab in the two years it took her case to come to trial. Despite her co-defendant supporting her defence by giving a statement saying how little involvement she had in the crime, as the fraud was run from her bank account she was found by the judge to have benefitted from the full £1m that was run through it and sentenced as a principal conspirator.

Lara's defence team did not feel she had strong enough evidence to run a duress defence. The facts of her case did not pass the subjective limb; that her life was in immediate danger, or that she was at risk of serious physical injury. The threat she was under was the withdrawal of drugs upon which she was dependent, not a threat to her life. Nevertheless, her culpability in this crime is in serious question and the lack of available defences to her is a concern.

### **Extract from 2019 [interview in The Guardian](#) with Dr Amanda Brown about her first book about life as a prison doctor:**

*(Dr Brown's) final move was to HMP Bronzefield, the largest female prison in Europe. "The biggest difference from the men...is how many women prisoners are victims themselves," says Brown. "They are victims of abuse, violence, rape. Their stories are heart breaking, overwhelming. I get lost for words when I think about them. At Bronzefield, you do learn what they're in for and it's usually shoplifting, theft, breach of licence. You do question whether prison is the right place for them – except for the fact that so many tell me it's a refuge."*

Dr Brown's second Prison Doctor book, this one about women in HMP Bronzefield where she works as a doctor twice a week, was published in 2020.

### **Quote from a Women in Prison Service User**

*"Since my probation has ended, I have continued to access support from [WIP] and felt secure enough to speak to someone about the domestic abuse I was suffering. I have taken*

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<sup>61</sup> Lara's story was provided by APPEAL. All names have been changed.

*part in the Freedom Programme which has given me an insight and better understanding of unhealthy relationships. Being around other women with similar experiences has helped a lot and I have built healthy friendships with people in the groups. All in all, [WIP] has had a massive impact, positively in my life and I carry on working through issues in my life that on my own would just not be able to do.”*

*“...my worker assisted me in obtaining housing, legal advice, clothing, amongst other things. Just to have someone to speak to about my concerns sometimes was all that I needed. Without the support I have received, I know for certain that I would have taken my life, I had lost everything and in my mind I had nothing left to live for.”*

## **Recent CWJ enquiries (2018-2020) (all names have been changed)**

### **Rose - counter-allegations in context of domestic abuse**

Rose was in an abusive and coercive relationship. Shortly after she returned home from having surgery, she and her then partner had an argument which escalated to Rose's partner repeatedly pushing her over and shutting her arm in the car door, causing serious injury. Both Rose and her partner called the police, her partner falsely claiming Rose had assaulted him, in order to deflect the blame from himself. The police arrived and – deciding wrongly that Rose was the aggressor – arrested her and charged her with common assault. This was her first alleged offence. Despite representations about Rose's vulnerability and the abuse she had endured, the CPS insisted on prosecuting. Crucial evidence was only disclosed at the last minute.

The Magistrate hearing her case refused to let the Defence adduce evidence about the abusive relationship or about the injuries Rose had suffered and convicted Rose, claiming that her partner's assault on her had led her to attack him later out of anger. She received a conditional discharge and is now appealing her conviction, but has suffered immense distress and psychological damage during the criminal justice process, with even domestic abuse support agencies wrongly identifying her as the perpetrator due to the mistaken approach of the police and CPS. Had the survivors' defence existed, with a surrounding policy framework to support better understanding of the dynamics of domestic abuse, it would have helped both the police and the CPS to recognise early on that there was no public interest in pursuing a prosecution and helped Rose to get the support she needed.

### **Yasmin – counter-allegations in context of domestic abuse**

Yasmin was a young woman who was a student. She had no convictions and had never been arrested. She was living with her partner who had been physically abusive in the past. One night he returned home drunk and told her that he had been with another woman. She slapped him and told him to leave. He refused to leave and she slapped him a second time. When she was trying to push him out of the door he grabbed her and there was a struggle. She was thrown to the floor, at one stage he put his knees on her back and at one stage he tried to strangle her.

Yasmin tried to cut her wrists with some broken glass and was bleeding. Her partner called the police and when officers arrived she admitted she had slapped him first but told them he had strangled her. The officers took the view that she was the aggressor as she had slapped him first.

She was interviewed at the police station as a suspect where she was tearful and told them about a mental health assessment the previous day. In interview she also told them about the strangulation and that she had photographs of bruising on her neck but the officers did not ask

to see them. She was offered a caution for assault and a duty solicitor advised her to accept it or she would be charged.

Yasmin brought a judicial review legal challenge to overturn the caution. Having this on her record could seriously impact her future career. The police refused to quash the caution and claimed that it was appropriate because she had committed a domestic violence incident, which the law regards as more serious. The judge at the judicial review hearing quashed the caution, stating that she was clearly the victim and not the perpetrator of domestic violence and therefore the rules on domestic violence offences did not apply, and it was also not in the public interest to caution her.

### **Emma – counter-allegations in context of rape**

Emma had met the perpetrator twice before she was raped. She had made it clear to the perpetrator that she did not want to have sex with him. He locked her into his accommodation, and she was unable to leave the apartment. The perpetrator also hid her shoes so that she could not leave the property. At one point she picked up an iPad which the perpetrator grabbed on to as well. Both Emma and the perpetrator had a little tug of war situation with the iPad as she described it. When she let go, given the force he was using to pull it towards him, the iPad smacked him in the face.

Eventually the perpetrator allowed Emma to leave. She reported him for rape. After the perpetrator found out that Emma reported him for rape, he made a counter-allegation that she had physically assaulted him. Emma was asked to come in for an interview as an allegation of GBH had been made against her. She was very confused and terrified that she had been accused of the most serious level of assault when she said she had not assaulted him in any manner. She was subsequently charged with ABH, not GBH for a cut to the perpetrator's head. This was the same scratch that had come about after the iPad smacked him in the face when he tried to pull it towards him and Emma let go.

### **Najma – criminalisation linked to experience of VAWG**

Najma's ex-partner stalked her between mid-2019 and early 2020. Najma reported this to the police and her ex-partner was arrested. He was released on pre-charge bail conditions. He breached his bail conditions on several occasions, but the police did not take action. The police asked Najma to hand in her phone in order for the police to download the data on her device. They did not ask the ex-partner for his phone. In the meantime, the police lost Najma's phone.

Najma was frustrated that the police had not been taking her seriously and attended the police station to give another statement. The police refused to take a statement at that point. Najma got quite upset. The police arrested her and remanded her to custody overnight. Till today Najma still does not know what crime she was arrested for. Whilst she was in custody, she self-harmed. Treatment was not provided to her despite her requests for help. The following morning, she was taken to court. The prosecutor said that they could not understand why she had been arrested and the judge agreed. She was released from custody, however, the incident has had a detrimental effect on Najma's mental health and she is still dealing with the trauma. Najma is currently bringing a claim against the police for false imprisonment.

### **Eddie – threat of arrest for allegedly false allegations**

Eddie 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 after the incident she made a report of rape to the police. Several weeks later the officers called her in for a meeting. At the meeting they effectively threatened her 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 by this, and concerned about her career, Edie decided to withdraw her allegations, and the case was closed.

### **Debbie – police officer perpetrator**

Debbie lived for several years with a man who was emotionally and physically abusive. During this time he joined the police. She called the police (the same force that he worked for) following one assault, but did not want to make a formal report at that time. She later moved to another part of the country and reported continuing abuse by him to her local force there, as well as asking for the earlier report of assault to be investigated. Neither force progressed an investigation.

Two years after her initial report of assault she called her ex-partner’s new girlfriend to warn her about his abusive behaviour and also get some information from her. A few months later she was contacted by an officer from her ex-partner’s force informing her that she must attend for an interview on allegations of harassment for contacting the girlfriend. She explained that she could not travel back to that area due to mental health difficulties. Nothing happened for eleven months although she kept chasing. Eventually a year later she was asked to attend her local force to be interviewed as a suspect and went with a solicitor. However, another year passed before she was told that the case would be closed with no charges brought against her. Having potential criminal proceedings hanging over her for two years had a very negative impact on her mental health.

### **Maya – police officer perpetrator**

Maya is a young woman who was in an abusive relationship with a former police officer. She made repeat contacts with the police (the same force he used to work for) to report abuse by him. She did not receive an appropriate response and then began to make complaints about this. She sent a large number of emails and made a lot of phone calls. She was sent from pillar to post, each time told to contact someone else, then have to chase over and over, as no-one returned her calls, which is why there were so many. She became upset at times, and police staff would put the phone down on her.

Maya was charged with persistently using a public communications network to cause annoyance/inconvenience/anxiety contrary to s.127 Communications Act 2003. She was trying to report legitimate concerns to the police as a victim of crime in good faith and there was no intention to cause annoyance, inconvenience or anxiety. She did make a lot of calls, and clearly became frustrated and upset, but under s.127 conduct would have to be “grossly” offensive, indecent, obscene or menacing.

She pleaded guilty on the advice of a defence solicitor who did not advise her properly. She was given a conditional discharge and a restraining order under Protection from Harassment Act not to contact the police apart from in an emergency. She was then convicted of two breaches of the restraining order. The first breach was on the day the order was made when she replied to an e-mail she had received from the police earlier that day before the hearing and her reply was after the hearing. The second related to her sending a formal complaint to the police on behalf of her mother about a separate matter.

She has now instructed a new solicitor to try to appeal her conviction.

## **Margaret – police officer perpetrator**

Margaret was arrested approximately eight times as a result of the actions of her police officer husband in the context of bitter disputes in the Family Court. On many occasions she was released without charge, but she ended up with several convictions and a caution.

One day during an argument she called 999. Police officers attended and allowed her husband to leave with their baby daughter. Shortly after the child was taken Margaret was served with a non-molestation order that her husband had obtained on false allegations that she had been violent to him. She sent him a text message begging him to let her see her daughter. She was arrested for this and given a caution for breaching the order.

The following month Margaret was arrested and charged with three counts of assault on the basis of her husband's false claim that she had slapped and kicked him. She was convicted of all three in the Magistrates Court after a trial where it was her word against his. He said in court that he was a police officer and could not lie or he would lose his job. She was also found guilty of four breaches of the order for sending pleading messages about the baby. She was sentenced to 18 months' probation.

Margaret's husband then offered to reconcile, and she was so desperate to be with her daughter that she agreed. They lived together for another two years. After their separation the daughter remained with Margaret but spent time with her father. One night Margaret was staying over at a friend's house with her daughter after a party and had been drinking. Her husband rang to say that he wanted to have their daughter, but she refused. He insisted that she bring the child to him immediately or he would send the police round. Margaret succumbed to the pressure and drove the child over. When she arrived at his house a police officer was waiting, breathalysed her and arrested her. She was charged with drink driving, and pled guilty on the advice of a solicitor who does not appear to have considered arguments about entrapment.

## Appendix 2 – ‘Women who kill: how the state criminalises women we might otherwise be burying’: Conclusion and recommendations

This is an extract from the CWJ’s recent report, provided for ease of reference. The full report and its executive summary can be downloaded [here](#). Limited hard copies will be available soon on request to CWJ.

### Conclusion

In 2007, Baroness Corston published a report examining the treatment of women in the criminal justice system.<sup>62</sup> It called for a radically different approach, one that recognised women’s distinct experiences in a system dominated by men. Although many of the recommendations in *The Corston Report* were accepted by the Government at the time, the findings of this research demonstrate that women who get caught up in the criminal justice system are still not getting justice.

The findings of this research make clear that both the law itself and the way in which it is applied in England and Wales create barriers for women. The following recommendations reflect this, calling for further law reform and changes to practice at every stage of the criminal justice process – as well as change beyond the criminal justice system – in order to overcome the triggers to women’s lethal violence against their abusers and the many barriers that impede women getting justice in these cases.

### Recommendations

#### 1. Systemic change to address triggers to women’s lethal violence against their abuser

1.1 Beyond the criminal justice system, the Government must implement the reforms demanded by specialist organisations working to tackle violence against women and girls in response to the Domestic Abuse Bill, including: equal protection and support for migrant women; reforms to housing, health and social care, welfare, the family courts and support for children; and long-term funding solutions for specialist community services.<sup>63</sup>

1.2 This must include a programme of public education to improve understanding of violence against women and girls and its potential impact on survivors’ lives, choices and behaviour. Specialist training should be made widely available for social care services, covering the complex dynamics and impact of domestic abuse and risk assessment, and drawing on innovative good practice models such as ‘Safe and Together’ in order to break down barriers to women’s disclosure of abuse.<sup>64</sup> This work must be culturally informed and inclusive of Black and minoritized women, migrant women and those with disabilities.

1.3 The police services and CPS must work closely with specialist services tackling domestic abuse in order to achieve consistent, competent policing of domestic abuse offences, including coercive control. This must include: challenging any culture of disbelief and minimisation of domestic abuse;<sup>65</sup> the appropriate use of protection orders; the effective

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<sup>62</sup> [The Corston Report](#) (2007) The Home Office.

<sup>63</sup> [Joint Recommendations on the Domestic Abuse Bill \(2020\) Women’s Aid Federation England.](#)

<sup>64</sup> [A Place to Go Like This: Breaking the Cycle of Harm For Mothers Involved in Offending Who Are Victims of Domestic Abuse, and Their Children \(2020\) Advance.](#)

<sup>65</sup> See CWJ’s super-complaint: [CWJ launch super-complaint: police failure to use protective measures in cases involving women and girls](#) (March 2019) Centre for Women’s Justice.

gathering of evidence; and early identification of the primary aggressor where there are counter-allegations. Learning should be drawn from good practice models, such as London's specialist domestic abuse courts, and must be culturally informed and inclusive of Black and minoritized women, migrant women, and those with disabilities. Policing and prosecution units dealing with domestic abuse must be properly resourced and trained so that legal measures introduced to tackle domestic abuse are implemented effectively

1.4 Legislative reform is also needed. Non-fatal strangulation and asphyxiation should be made a specific offence to protect survivors.<sup>66</sup>

## **2. When women kill: early stages of the criminal justice process**

2.1 The Government should develop a comprehensive policy framework to support improved criminal justice responses to those who offend as a result of their experience of domestic abuse, informed by close joint working with women's specialist services in the community. This work must include specific consideration of the additional challenges that can be faced by certain groups of women, including Black and minoritised women, foreign national women and those with disabilities. Training and guidance materials should be commissioned from specialist women's and Black and minoritised women's frontline services with expertise in gender-based violence. Learning should be drawn from models of good practice, such as London's domestic abuse courts, to develop specialist approaches with women defendants.<sup>67</sup>

2.2 The police response should be improved by:

- a) Reviewing the role of forensic medical examiners in 'fitness for interview' tests, including the need for additional training.
- b) Providing additional guidance for police first responders and custody sergeants on identifying when a woman suspect is, or may be, a victim of domestic abuse (including coercive control) and ensuring it is followed. Learning may be drawn from equivalent guidance to police on human trafficking indicators.<sup>68</sup>
- c) Providing guidance on the circumstances in which an interview of a suspect who is or may be a victim of domestic abuse should be suspended so that a victim / witness can be conducted, as occurs in child sex exploitation cases.<sup>69</sup>

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

- a) The Solicitors Regulation Authority should amend the police station representatives' accreditation scheme to include modules on domestic abuse indicators and how to handle those at the station, to improve the provision of initial legal advice.<sup>70</sup>

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<sup>66</sup> [CWJ Submission to Domestic Abuse Bill Committee 21 May 2020: The Need For an Offence of Non-fatal Strangulation](#) (2020) Centre for Women's Justice.

<sup>67</sup> [CWJ Submission to Domestic Abuse Bill Committee 21 May 2020: The Need For an Offence of Non-fatal Strangulation](#) (2020) Centre for Women's Justice.

<sup>68</sup> [Authorised Professional Practice – Major Investigation and Public Protection: Modern Slavery – Key Responsibilities](#) (2020) College of Policing.

<sup>69</sup> [Authorised Professional Practice – Major Investigation and Public Protection: Modern Slavery - First Response and the National Referral Mechanism](#) (2020) College of Policing.

<sup>70</sup> See the [Solicitors Regulation Authority website](#) for further information (police representatives accreditation scheme). See also the [recommendations made by Naima Sakande for action by the Law Society](#) (Sakande, N. (2019) [Righting Wrongs: What Are the Barriers Faced by Women Seeking to Overturn Unsafe Convictions or Unfair Sentences in the Court of Appeal](#) (Criminal Division) (2019) The Griffins Society)

- b) Mandatory training should be introduced for criminal defence solicitors and barristers, equivalent to existing training for those representing children and vulnerable witnesses, for the purposes of representing defendants and suspects who are victims of domestic abuse, including coercive control.
- c) Legal aid rules should be changed to ensure that women can appoint a new solicitor who is able to show specialist knowledge of the context of domestic abuse. This could be done by reference to a panel of specialists.

#### 2.4 In order to improve CPS practice:

- a) Drawing on existing CPS legal guidance on domestic abuse, additional guidance should be provided on the links between women's offending, including women who use lethal violence, and their experience of domestic abuse. This should cover compliance with the UN Bangkok Rules<sup>71</sup> (which require women in the criminal justice system who have experienced violence to be identified, treated appropriately and receive support, and require their experience to be taken into account in sentencing decisions), CEDAW<sup>72</sup> and the Istanbul Convention. The guidance should indicate the circumstances in which it may be appropriate to charge with manslaughter rather than murder, or not pursue charges at all, and cover acceptance of pleas. The guidance should also support appropriate interpretation of the alleged behaviour of the suspect who is also a victim of abuse, to avoid 'victim-blaming' and any reliance on myths and stereotypes.
- b) There should be a meaningful mechanism for seeking a review of a decision to prosecute for murder in circumstances where there is clear evidence of a history of domestic abuse suffered by the suspect. The CPS decision maker should be required to provide reasons where they reject representations not to charge or not to accept a plea to manslaughter.
- c) An expert panel of prosecutors should be established for homicides by women who may have experienced abuse. Learning should be drawn from London's specialist domestic abuse courts.

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

### 3. Court proceedings

3.1 Adequate legal aid must be made available throughout the criminal process, including on appeal, to reflect the time required for criminal defence lawyers to build trust with their clients and support disclosure of abuse, and for investigation of the background to the offence. There should be fewer restrictions on the ability to transfer legal aid where a defendant loses trust in their solicitor due to lack of understanding of prior abuse. We support the recommendations made by Naima Sakande for a revision of the terms of the Standard Crime Contract 2017, and propose that those amendments should be extended to criminal legal aid services throughout proceedings in these cases.<sup>73</sup>

<sup>71</sup> [United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders \(the Bangkok Rules\)](#) (October 2010) United Nations General Assembly.

<sup>72</sup> UN Convention on the Elimination of all forms of Discrimination against Women

<sup>73</sup> Sakande, N. (2019) [Righting Wrongs: What Are the Barriers Faced by Women Seeking to Overturn Unsafe Convictions or Unfair Sentences in the Court of Appeal](#) (Criminal Division) (2019) The Griffins Society.

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

- a) Defendants who have experienced domestic abuse should be provided with the same protection that exists for witnesses giving evidence as a complainant, in order to enable them to provide the best evidence. Such defendants should have access to a range of provisions to ensure a fair trial, such as practical support in the courtroom and special measures. Learning should be drawn from good practice models, such as London's specialist domestic abuse courts, which could provide a model for a specialist, gender-informed and trauma-informed criminal justice process for female defendants.<sup>74</sup>
- b) The *Equal Treatment Bench Book* should be amended at paragraph 62 to include cases involving domestic abuse and violence, and awareness should be raised among advocates and the judiciary of how to make use of these provisions for vulnerable defendants who have been victims of abuse.

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

- a) An expert panel of judges should be established to preside over such cases.
- b) The Judicial College should introduce training and guidance on the appropriate handling of such cases.
- c) Chapter 6 of the *Equal Treatment Bench Book* should be amended to cover circumstances where a defendant is also a victim of domestic abuse, including coercive control.
- d) Relevant sections of the *Equal Treatment Bench Book*, such as examples of coercive conduct, should be incorporated into the *Judicial College Crown Court Compendium* to ensure that such information is set out to juries. Guidance on matters such as reasons for not leaving dangerous partners, should be made mandatory to explain to juries.

#### **4. Additional challenges**

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

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

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

#### **5. Expert evidence**

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<sup>74</sup> [A Place to Go Like This: Breaking the Cycle of Harm for Mothers Involved in Offending Who are Victims of Domestic Abuse, and Their Children](#) (2020) Advance. See recommendation 17, p39.

- 5.1 The use of independent experts on violence against women and girls, race and gender, culture and religion should be encouraged and be more readily admitted as evidence by judges. Experts from the specialist women's sector (including, where relevant, the specialist Black and minoritized women's sector), with a track record of tackling violence against women and girls, should be used and recognised for their insights based on experience.
- 5.2 Psychiatrists and psychologists instructed in these cases should have some expertise in domestic violence and trauma. Where a defendant is under the age of 18 at the time of the offence, adolescent specialist evidence should also be required.
- 5.3 Judges should recognise the value of, and admit more readily, expert evidence on coercive control and other forms of violence against women, including expert evidence from those who can provide a cultural context, particularly around norms in different Black and minoritised communities.

## **6. After conviction**

### **6.1 Sentencing**

- a) Tariff guidelines for murder should be reviewed in the light of the findings of this report.
- b) There should be greater flexibility in sentencing to recognise not only dangerousness but also the absence of dangerousness. The Sentencing Council should review its guidelines in light of this research and Government ministers should consider whether changes are needed to the statutory sentencing framework.
- c) Aggravating factors and increased minimum tariffs for the use of a weapon should be reviewed in light of these findings, recognising that women who have been suffered previous violence from the deceased are more likely to use a weapon to defend themselves and less likely to kill with their bare hands.
- d) Consideration should be given to the impact of long sentences of imprisonment on the families of those sentenced, in particular young children.<sup>75</sup>

### **6.2 Appeal process**

- a) The CCRC should undertake a fast-track review of all cases (including those where there has not been a previous appeal) where women have been convicted of murder in circumstances where there is some evidence of a history of domestic abuse. The review team must include people with expertise on the dynamics and impact of domestic abuse, and on how this plays out in different cultural contexts. Training should be provided to all CCRC caseworkers to assist them in carrying out such a review.
- b) The length of time it takes for a case to get to appeal stage after grounds are submitted should be reduced.
- c) Judges sitting in the criminal appeal court should be given mandatory training on the dynamics and impact of domestic violence. There should be greater willingness to admit fresh expert evidence on this.

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<sup>75</sup> Minson, S. (2020) [Safeguarding children when sentencing mothers](#); Prison Reform Trust (2018) [What about me? The impact on children when mothers are involved in the criminal justice system](#)



- d) We endorse the recommendations made by Naima Sakande in her recent research on the appeal process.<sup>76</sup>

### **6.3 Parole**

- a) Training is needed for all participants in the parole process, including the Parole Board, probation officers and lawyers, on gender-based violence – including domestic violence and coercive and controlling behaviour.
- b) There should be more gendered and culturally specific resources within prisons to help Black and minoritised women with the parole process.
- c) A review of the use of recall on licence is required. This should only be used where there is a risk of harm and the risk is no longer manageable in the community. Probation services should be accountable for unnecessary recall decisions.
- d) More financial and resourcing support is needed for specialist, gender specific community services that can support women post-imprisonment.
- e) Research should be undertaken on the extent of any further violent offending after life sentence women are released.
- f) There should be a centralised database, providing information on all available options for supported and trauma-informed accommodation and community support, including Black and minoritised women-specific and culturally specific support, as alternative options to approved premises.
- g) Women released on life sentence should be provided with an information pack or app, including all information on life licence and disclosure issues and a list of resources.

## **7. Further recommendations**

- 7.1 The Government should regularly publish data on both homicide perpetrators and victims, disaggregated by race and gender, including defences used, in order to inform understanding of intersectional discrimination in the criminal justice system.
- 7.2 Section 76 of the Criminal Justice and Immigration Act 2008 should be amended to allow survivors acting in self-defence against their abuser the same protection as householders defending themselves against an intruder.<sup>77</sup>
- 7.3 The Government's VAWG and Domestic Abuse Strategies, and the Statutory Guidance Framework to accompany the Domestic Abuse Act 2021, should demonstrate and foster a clear understanding of the ways in which survivors of domestic abuse can be unjustly criminalised as a result of their experience of abuse. These strategies must also establish an expectation on all agencies to improve their own practice so that unjust criminalisation is avoided, and so that survivors are instead supported and protected. This must be accompanied by sufficient resources for both statutory and non-statutory services to implement reforms.

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<sup>76</sup> Sakande, N. (2020) [Righting Wrongs: What Are the Barriers Faced by Women Seeking to Overturn Unsafe Convictions or Unfair Sentences in the Court of Appeal \(Criminal Division\)?](#) The Griffins Society.

<sup>77</sup> See CWJ's [proposed amendments](#) to the Domestic Abuse Bill 2020, Centre for Women's Justice.

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

**8. Recommendations for further research**

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