

Centre for Women's Justice response to the MOJ Murder Sentencing Consultation

Overview

The government consultation document provides a very helpful overview of the relevant context for the consultation:

<https://www.gov.uk/government/consultations/murdersentencing/murder-sentencing-consultation>.

About CWJ

Centre for Women's Justice is a legal charity that aims to hold the state accountable around violence against women and girls and challenge discrimination in the criminal justice system. We have significant legal expertise around the issue of domestic homicide and have an extensive evidence base of case studies relating to both women who kill male intimate partners and men who kill women.

Our director, Harriet Wistrich, is a founder of the campaign group [Justice for Women](#) which was established in the early 1990s to campaign around the issue of women who kill their abusers. Harriet has advised and represented many women convicted of the murder of abusive partners at the criminal appeal court over the past thirty years from Emma Humphreys in 1995 to Sally Challen and Farieissia Martin in 2018 and 2020 respectively.

We published the report ['Women Who Kill: how the state criminalises women we might otherwise be burying'](#) in 2021 following four years of in depth research into cases of women who kill abusive partners. In the last few years, we have been contacted by 29 women convicted of the murder of their current or former partner since 2010, nearly all of whom claim they suffered previous abuse by them. In majority of the cases the women have received a tariff over 15 years and we have seen a number of sentences imposed over 20 years.

We are also often consulted by families of women killed or driven to suicide by their male partners where there is a history of violence or coercive control towards those women often in circumstances where there have been significant failures by police and other state agencies to provide protection from those partners. We have advised and represented such families at

Inquest proceedings and in relation to other post death investigations. We convene a femicide working group which consists of lawyers and practitioners from specialist organisations working around domestic homicide and share insights and expertise from case studies and research. In 2023, working in partnership with Imkaan, we published a report, '[Life or Death?](#)' on the domestic homicides of Black and minoritised women which included 46 case studies (38 women who were killed by partners, 6 driven to suicide and 2 women who killed their violent partner) as well as a review of available evidence.

CWJ's response

From the body of work described above, it is abundantly clear that any reforms to the sentencing of domestic homicide must take account of the vast contrast in the experiences of women who kill men compared with men who kill women in intimate partner relationships. In our experience, most men who kill their intimate partners do so following a history of violence, abuse and/or coercive and controlling behaviour towards them. In contrast, most women who kill their male intimate partners do so following a history of being subject to violence, abuse and/or coercive controlling behaviour. The model devised by Jane Monckton Smith of the eight stages to homicide timeline, which applies to so many killings by male perpetrators of domestic homicide, does not replicate itself in cases where women ultimately kill their male partner. Indeed, the pattern is almost reversed in that the woman who ultimately kills, may have been the victim, but ultimately survived the eighth stage and the entrapment by an act of self-preservation which led her to kill the perpetrator of the violence towards her.

Given our expertise from over thirty years, we have noted how sentences for domestic homicide offences have on average increased significantly. In the early 1990s when Justice for Women was founded, women convicted of murder were rarely given a minimum tariff sentence of over 12 years. Now, even in cases where evidence of a history of domestic abuse towards the defendant is accepted, minimum tariff sentences are very rarely below 14 years. In our report which gathered data over a ten-year period from 2008 to 2018, 92 cases were identified in which women had killed their abuser. Of these, 43% (n=40) were convicted of murder. Of those cases where there was a murder conviction, 33% (n=13) were sentenced to 20 years or more; 35% (n=14) were sentenced to 15–19 years; 25% (n=10) were sentenced to 10–14 years; and 3% (n=1) was sentenced to 5-9 years.

The figures above suggest that where the minimum term is 15 years any aggravating factors are likely to increase sentences over that average, even where the presence of a history of abuse is a mitigating factor. In the [Wade review](#), however, we note that the average sentence for the women convicted of murder was 14.6 years, although this was a sample of only five cases from the two-year period and should be treated with caution.

As a result of our advocacy around the issue of women who kill abusers, we are continually approached by women or their friends and families, who have been convicted of murder but

feel that the outcome is wrong because they were victims of abuse. We attach a table, marked **Appendix A**, constituting a brief summary of 33 cases we have been contacted about in the last few years where women have been convicted of murder. You will see that in 25 of those cases (76%), the women have told us they were subject to domestic abuse by the deceased. In the other cases, either we don't have that information or the women were not in a relationship but subject to sexual assault or had previously experienced forms of male violence. Of the 25 cases, at least 19 put forward some evidence of this abuse at trial but were nonetheless convicted of murder. Despite evidence of abuse in such relationships, in the majority (70%) of these cases, women received sentences of over 15 years. Some received sentences as long as 24 years. In 82% of these cases, women used a knife and in all but two cases, some other weapon was used.

In addition to our work around homicide, CWJ also provides advice to many women and frontline organisations supporting women who are victims of domestic abuse in relation to criminal justice responses. From our extensive work in this area, we do not consider that the concept of coercive and controlling behaviour (CCB) is well understood by many practitioners working within the criminal justice system from police, to lawyers and judges, amongst others. This is also highlighted in the review by Clare Wade KC at paragraph 5.4. As she notes CCB should be understood as a method by which the abuser entraps the victim in a relationship, making it very hard and often perilously dangerous to leave. It is a bespoke form of abuse that targets a particular victim's vulnerabilities. Thus, it needs to be understood by looking at the whole history of the relationship and evolving dynamics, something that is rarely adequately explored in a murder trial. Without such a thorough understanding, fair outcomes in trials and appropriate sentencing for murder cases where there is a history of coercive control in the relationship preceding the killing, will not result. A targeted public education campaign and in-depth training for all practitioners in the criminal justice system around coercive and controlling behaviour should be rolled out whichever proposed changes are adopted following this consultation.

We approach this consultation acknowledging the campaigning of bereaved families, in particular the mothers of Ellie Gould and Poppy Waterhouse Devey, to increase sentences for the murder of women in domestic homicide. Ellie and Poppy were young women who were stabbed and killed by their boyfriends in their homes whilst attempting to separate from them. The perpetrators received sentences of 12 and a half years and 16 years respectively. As Carole Gould and Julie Devey have highlighted, there is an absurd disparity in sentencing between knife crime committed in the home in contrast with knife murders that take place in the street, and this could be interpreted as an indication that domestic homicide is not taken as seriously. Indeed, we share the view that murders by domestic abusers who entrap women in relationships, isolate them, terrorise them and ultimately kill if they attempt to leave, is not treated with the gravity it should be. However, our view, as set out below in answer to consultation questions, is that to increase the minimum tariff for murder with a weapon in the home will have many unintended serious discriminatory consequences.

Furthermore, whilst we accept the significance highlighted by these campaigns that disparity in sentencing conveys the message that knife crime in the street is regarded as more serious than domestic homicide, there is a far more wide reaching problem which underlies the issue of domestic homicide . That is the failure in the criminal justice system to tackle domestic abuse and CCB that falls short of homicide. If there was a more effective criminal justice response: if victims were better protected, if reports were better investigated, if prosecutions were more effective and if sentencing for such offences reflected the seriousness of such offending falling short of homicide, then some of the terrible murders that we have seen might not have occurred at all.

As the government consultation paper highlights, Schedule 21 to the Sentencing Act (2020) (previously Schedule 21 to the Criminal Justice Act 2003) sets out the principles which the court must have regard to when assessing the seriousness of all cases of murder. This schedule creates a series of minimum term sentences for murder with reference to a number of factors aimed at reflecting the seriousness of the murder and certain public interest considerations with regard to deterrence. Thus, for example, the murder of a child or of a police officer will automatically start at a higher level. The use of a gun will attract a 30-year minimum term and, following campaigning by the family of Ben Kinsella, murders committed where a weapon has been brought to the scene will attract a minimum term of 25 years. Murders that do not fit into any of the categories that increase the minimum term tariff will alternatively attract a minimum term starting point of 15 years. Thus, most domestic homicides, which usually take place in the home, will start at 15 years, even where they are preceded by a history of terrifying coercive and controlling behaviour by the deceased towards the defendant, which may have caused extreme suffering to the defendant prior to the killing.

Our view is that Schedule 21 is not fit for purpose. Urgent reform is needed to ensure a different approach is taken to the sentencing exercise following a conviction for murder. The current framework has led to some significant anomalies with, in some cases, sentencing not adequately reflecting the defendant's high culpability and/or seriousness of the crime. Conversely, other defendants receive disproportionately harsh sentences in light of their low risk to others and relatively lower culpability, due to their experience of abuse at the hands of the deceased. Sentencing of course has a number of purposes, from acting as a deterrent, to signalling public abhorrence, protecting the public from someone who is dangerous as well as offering opportunities to rehabilitate. In murder cases, we consider the issue of protection of the public should be at the forefront of consideration and further research and understanding is needed to identify the type of offender who is a risk and more likely to re-offend. In our research on women who kill, we were unable to identify a single case of a woman who killed an abuser going on to kill or seriously offend again. Sadly, there are anecdotally a significant number of cases of men released from prison going on to kill or seriously offend again.

Introduction of additional minimum tariffs within Schedule 21 could result in sentences being imposed which are contrary to the intended purpose of a tariff. Careful attention is also

needed to ensure that tariffs do not exacerbate existing disproportionality in sentencing of Black and minoritised men and women.

For further information about improvements needed to sentencing guidance to ensure full account is taken of women defendants' experience of domestic abuse and other forms of exploitation and violence against women and girls (VAWG), see our submission dated 21 February 2024 to the Sentencing Council consultation on the 'Imposition of community and custodial sentences guideline'. For further information about the impact of trauma and the need for an intersectional, gender-specific approach to the sentencing of women, including victims of VAWG, we refer to our submission dated 30 November 2023 to the Sentencing Council consultation on Miscellaneous Amendments to Sentencing Guidelines. Further copies of both submissions are enclosed.

Having outlined our view on the existing framework provided by Schedule 21, in our responses to the questions below, we restrict ourselves to discussing the use of aggravating and mitigating factors that will either increase or decrease a sentence where the starting point is 15 years.

Proposed responses to consultation questions

Q1.1: Should a minimum term starting point, above the baseline starting point of 15 years, apply to cases of murder preceded by a history of controlling or coercive behaviour against the murder victim or not?

As indicated above, we do not agree that a new minimum starting point should be introduced for murder. However we do consider that cumulative aggravating factors should enable the starting point sentence to be increased significantly. In cases where a murder is preceded by a history of coercive and controlling behaviour by the defendant towards the victim, this should be a significant aggravating factor, capable of increasing the minimum term by many years.

Q1.2: If a minimum term starting point were to apply to cases of murder preceded by a history of controlling or coercive behaviour against the murder victim, what should the starting point be?

As indicated above, we do not agree with a variation to the minimum starting point.

Q1.3: If a minimum term starting point were to apply to cases of murder preceded by a history of controlling or coercive behaviour against the murder victim, should this apply to all cases where there was controlling or coercive behaviour or only to those cases where the controlling or coercive behaviour was of a high level of seriousness?

Leaving aside the question as to whether a new minimum term should be created for murders preceded by a history of CCB towards the victim, we do not believe that it is easy to grade the degree of seriousness in a coercive and controlling relationship. Any case of coercive and controlling behaviour by the defendant which ultimately concludes with a murder is an indicator of seriousness. As we describe above, in our experience there is a lack of understanding or sufficient training around the concept or dynamics of coercive control. CCB is a bespoke form of abuse that targets a victim's particular vulnerabilities and is designed to entrap a victim in the relationship. In some cases, CCB may include the use of serious violence or punishment rape. In other cases entrapment may be achieved with only the minimum threat of physical violence in the background, by the use of extreme psychological torture. It is not easy therefore to grade the seriousness of CCB and attempting to do so, where the concept itself is poorly understood, would lead to anomalous outcomes.

Q2.1: Should a minimum term starting point, above the baseline starting point of 15- years, apply to all murders committed with a knife or other weapon or not?

We strongly oppose the introduction of an increase to the minimum starting point for cases where a knife or weapon is used. Such a reform would indirectly discriminate against women.

CWJ's ['Women who Kill'](#) report and the Wade review both show that in the majority of cases where women kill their male partners, the woman has experienced a history of abuse from the deceased, and in most of these cases women use a kitchen knife or other household implement as a weapon. Our research identified that in 77% of cases where a woman killed her partner, there was evidence that she had previously been a victim of abuse by him, and only 8% of cases did not involve the use of a weapon. In the Wade review, a weapon was used in all the cases where women killed men. In our **Appendix A** we documented 33 cases of women convicted of murder who sought our advice on appeal, 82% used a knife, and all except 2 used another type of weapon.

Although a weapon was also used in many cases where men killed their female partners, this is often a feature of overkill or sadistic torture. Furthermore, in many cases where men killed women, their deaths were caused by strangulation – a particularly gendered crime – or beating. The fact that in almost all cases where women kill they use a weapon is unsurprising given that women tend to be physically weaker than men, and women who attempt physical violence against their abuser will know what violence he is capable of and the risks of confronting a violent perpetrator. A weapon is often used in these cases when women are faced with an imminent threat or can see no other way out.

In many of the cases where our director, Harriet Wistrich, has represented a woman convicted of murder at appeal, that woman used a knife from the kitchen to defend herself often during the course of a physical attack by an abusive partner. Despite the facts and circumstances of such cases, self-defence for these women often failed at trial – possibly because the use of a

weapon is deemed by the jury to make the attack disproportionate to the threat faced and thereby undermines the required components of self defence. In our 'Women who kill' research only 7% of cases succeeded with self-defence. If the minimum tariff were increased, this would mean cases which came close to self-defence but failed could result in extraordinarily long sentences.

If a new minimum term for the use of a knife in the home were introduced to counter the anomaly between a killing in the street and at home, aside from the unintended consequence of further punishing a victim of abuse who killed in an act of self-preservation, a different anomaly might emerge. It is hard to see the justification for a higher minimum term for a murder committed by a violent abusive partner with a weapon, as opposed to an equally brutal murder committed by strangulation or beating.

If a minimum term starting point were to apply to all murders committed with a knife or other weapon...

Q2.2: What should the starting point be?

We do not agree that the minimum starting point should be increased.

Q2.3: Should this be disapplied in cases where a victim of abuse has killed their abuser or not?

If a minimum starting point were introduced, it should certainly be disapplied in cases where a victim of abuse killed their abuser.

However, from our research and experience of representing women at appeal following conviction, we know that often female defendants' accounts of abuse from the deceased are disbelieved or minimised. This is sometimes evident from a judge's sentencing remarks, and from jury responses. For example, in the sentencing of Emma Jayne Magson following a retrial in 2021, Judge Baker said:

"I am sure that until the week of his death, he had not shown any physical violence towards you.

On the contrary, I am sure that such physical acts of violence which had taken place during your relationship are ones for which you were responsible.

I am sure that the suggestion that James Knight had strangled you was only mentioned after you had returned to your mother's home and discussed matters with members of your family... Moreover, it is clear from the evidence of the forensic pathologists in this case that although the red marks to your neck together with other marks to your body could have been caused by someone placing their hand around the front of your neck,

it could equally have been caused when James Knight had pushed you into the car on Pool Road at an earlier point in the night.”

We also know that in many cases the history of abuse is hidden and therefore there is no documentation or third-party evidence. Even where there is a history of violence or abuse, there may be no independent evidence of this. As detailed in our 2022 [‘Double Standard’](#) and [‘No Safe Space’](#) reports, many women struggle with disclosure, particularly where the abuse may have a sexual element. In certain cultures, there may be particularly strong codes of honour and shame which may have put immense pressure on women to prevent them speaking out to any third party. Some women from minority cultures may be so controlled that if they ever engage with the outside world, for example by being accompanied by their husband to the doctor, that there may be few opportunities to disclose, even if she has the courage to do so. This is highlighted in our report on [‘Women who Kill’](#). The absence of contemporaneous evidence of abuse often undermines the victim’s account.

Question 3.1:

Do you agree or disagree that we have correctly identified the range and extent of the equalities impacts under Section 1 of these proposals set out in this consultation? Please give reasons and supply evidence of further equalities impacts if you believe otherwise.

Adequate consideration has not been given to equalities impacts. Although there is some recognition that those convicted of murder may be victims of abuse, there is insufficient acknowledgement of the different experience of men and women and the particular difficulties many women may face when disclosing abuse. Additionally an intersectional approach is required to address the significant disparities experienced by Black, minoritised and migrant women and men in the criminal justice process.

Question 3.2: Do you agree or disagree that we have correctly identified the range and extent of the equalities impacts under Section 2 of these proposals set out in this consultation? Please give reasons and supply evidence of further equalities impacts if you believe otherwise.

We have highlighted above how increasing the minimum tariff for use of a weapon will indirectly discriminate against women, and the need for an intersectional approach to combat discrimination against Black, minoritised and migrant women and men.