**Centre for Women’s Justice (CWJ) submission to consultation on revised Home Office Statutory Guidance Framework on Controlling or Coercive Behaviour**

**June 2022**

**[Submitted using online form]**

**Do you have any comments on Section 2 “Criminal justice response” in terms of content or clarity?**

Centre for Women’s Justice (CWJ) is a lawyer-led charity focused on challenging failings and discrimination against women in the criminal justice system. We carry out strategic litigation and work closely with frontline women’s sector organisations on using legal tools to challenge police and prosecution failings around violence against women and girls.

Please note that in this consultation response we use the term “victim” which is used in the guidance, but we note that the term “survivor” is generally used in the women’s sector.

**Section on “Types of behaviour” (para 26 – list of behaviours)**

The Home Office Statutory Guidance Framework on Controlling or Coercive Behaviour[[1]](#footnote-1) previously listed relevant behaviour of the perpetrator as potentially including:

*Forcing the victim to take part in criminal activity such as shoplifting, neglect or abuse of children to encourage self-blame and prevent disclosure to authorities.*

This statement has been removed from the revised guidance and replaced with the more generic, ‘*Acts of coercion or force to persuade the victim to do something that they are unwilling to do*.’ The reference should be reinstated and built upon to explain how Controlling or Coercive Behaviour can be linked to victims’ offending or alleged offending, as highlighted in our response to question 16 below.

**Section on “conducting appropriate risk assessments” (para 37 onwards)**

It is important, to ensure that risk assessments are conducted properly, for the Guidance to address the known links between controlling and coercive behaviour (CCB) and intimate partner homicide. Research has shown that both CCB and stalking are closely associated with such homicides, and both share a possessive, fixated, and often jealous mindset in the perpetrator. We refer you to the research by Professor Jane Monkton-Smith on the 8 stages homicide timeline which identifies CCB as a key factor[[2]](#footnote-2), and the research of Evan Stark who identified that CCB is nine times more effective in predicting homicide than threats and violence.[[3]](#footnote-3) It is important to make explicit reference to this issue as many practitioners, including police officers, will assume that if there is no serious violence, there is not a significant risk of fatality.

We note that there is a section on domestic homicides and suicides in the draft Guidance at paras 101 to 107 which makes some excellent points. However, this is in Section 6 which deals with other linked offences and so it is likely to be referred to where there has already been a homicide or suicide. It should appear in the risk assessment section as an important factor before any death occurs, and should be stressed to be a risk factor.

**Section on ‘Perpetrator tactics’**

The guidance helpfully mentions at paragraph 64 that perpetrators may make ‘false or vexatious allegations’ against victims’. It refers here to College of Policing guidance on [Arrest and other positive approaches](https://www.college.police.uk/app/major-investigation-and-public-protection/domestic-abuse/arrest-and-other-positive-approaches) to be taken at the scene of a domestic abuse incident. This guidance states that “a manipulative perpetrator may be trying to draw the police into colluding with their coercive control of the victim; police officers must avoid playing into the primary perpetrator’s hands and take account of all available evidence when making the decision to arrest”. This is helpful but the point is buried and needs to be expanded on. It should be included in a substantive section about victims’ criminalisation within the statutory guidance, giving further background and indicating how police and prosecutors should respond to such situations.

Paragraph 65 states, without commentary:

“The [CPS Domestic Abuse Legal Guidance](https://www.cps.gov.uk/legal-guidance/domestic-abuse) states that ‘Prosecutors may often be presented with conflicting accounts of the incident, with each party claiming to be the victim. The offender may make a counter-allegation of abuse, or argue that they have acted in self-defence, making it difficult to identify and distinguish between the primary victim and primary aggressor. The police should explore the nature of the relationship between the individuals; the context of the offending, including any previous call outs, allegations and/or convictions involving the individuals; and, whether there are any other factors at play which may impact on an allegation, such as civil or family proceedings.’

Reference is made to table 1 of the [CPS Toolkit for Prosecutors on Violence Against Women and Girls Cases Involving a Vulnerable Victim](https://www.cps.gov.uk/sites/default/files/documents/publications/toolkit_for_prosecutors_on_vawg_cases_involving_vulnerable_victims.pdf) on assessing the credibility and understanding perpetrator tactics. The only reference in Table 1 to the risk of victims’ inappropriate criminalisation is perhaps the implicit reference in a single bullet point under ‘Offender behaviour after the crime’ which states that one type of behaviour to look out for is ‘Making counter-allegations against the victim’.

Again, while these references are helpful as far as they go, they are buried and will be easily missed; they also give very limited guidance on how police and CPS should respond in those circumstances in order to identify the primary victim. Avoiding the risk of inappropriate criminalisation of victims needs to be more coherently and substantively addressed – not only in relation to counter-allegations, but also in the wider circumstances in which victims can become criminalised, including as a result of Controlling or Coercive Behaviour – preferably in a distinct section of the guidance.

**Do you have any comment on Section 4 “Criminal penalties and protection orders” in terms of content or clarity?**

This section makes no mention of non-molestation orders (NMOs), which is a serious omission given that they are by far the most commonly used protection orders. Whilst they are issued by the Family Courts and not the criminal justice system, a breach of a NMO is a criminal offence and it is important to stress this, as enforcement of breaches is often inadequate.

There is also a Sentencing Council Definitive Guideline on sentencing of breach offences which applies to breaches of NMOs and restraining orders, and a link to that should be included: <https://www.sentencingcouncil.org.uk/wp-content/uploads/Breach-Offences-definitive-guideline-Web.pdf>

Section 4 describes DAPNs and DAPOs, but does not include Domestic Violence Protection Notices and Orders, which are still in place for a significant time. We understand that the pilot for DAPN/Os will not start until 2023 and may go on for two years before they are rolled out nationally. DVPN/Os therefore remain important. As well as describing their use, the Guidance should include the fact that whilst a breach is not a criminal offence, breaches can be enforced though the Magistrates Court as a contempt of court which can lead to a fine or up to 2 months’ imprisonment.

**Question 18: Do you feel there are any significant gaps in the guidance that should be addressed?**

**Need for the guidance to address victims’ criminalisation substantively**

The inappropriate prosecution of victims of VAWG – including victims of Controlling or Coercive Behaviour - is an area within our expertise that requires significant reform, and we therefore address this in some detail below.

**Summary**

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

Over the past thirty years CWJ’s director, Harriet Wistrich, has been at the forefront of challenging convictions of women who have killed their abusive partner while subject to coercive control and other forms of domestic abuse. In particular, she represented Sally Challen whose conviction for murder was quashed after the court accepted that the framework for understanding her as a victim of coercive control impacted on the psychiatric evidence, giving rise to the defence of diminished responsibility. In 2021, CWJ published a major piece of research considering the barriers to justice for women who kill their abuser.[[4]](#footnote-4) Although the focus of that research is on the small number of women who kill, it also sheds light on the criminal justice system’s ability to deliver justice more widely for those who offend due to their experience of abuse. Our 2022 Double Standard report sets out how women’s offending more broadly is often directly linked to their own experience of domestic abuse, and how victims can be unfairly criminalised in a wide variety of ways, including as a result of their experience of Controlling or Coercive Behaviour.[[5]](#footnote-5)

The revised statutory guidance contains no explicit reference to the links between Controlling or Coercive Behaviour and victims’ offending or alleged offending, beyond brief references to the potential for perpetrators to make ‘false or vexatious’ allegations against victims, and references to guidance on identifying the primary victim at the scene of a domestic abuse incident. This is wholly inadequate and a missed opportunity to alert frontline agencies to the risks of inappropriate criminalisation of victims – including those subject to Controlling or Coercive Behaviour – and how they should respond.

This needs to be addressed substantively in the guidance in order to overcome the prevailing culture and practices that lead to unjust criminalisation of victims of domestic abuse and other forms of VAWG. This must include consideration of the distinct factors that may be relevant for Black, Asian, minoritised and migrant women, disabled women (including those with mental health needs) and young women. This is particularly important given the lack of any existing guidance about the ways in which victims of VAWG may be criminalised, beyond limited police and CPS guidance about self-defence and counter-allegations at the scene of a domestic abuse incident.

**Unjust criminalisation of victims of VAWG and action needed**

Our 2022 [Double Standard](https://www.centreforwomensjustice.org.uk/double-standard) report collates evidence of unjust criminalisation of victims of domestic abuse and other forms of VAWG, including those accused of using force against their abuser. The report draws on case studies from CWJ’s legal enquiries service, and earlier research, to explain the barriers to justice faced by victims throughout the criminal justice process. In the report, we call for improvements in guidance and practice to be implemented throughout the criminal justice process, including through revisions to the Code for Crown Prosecutors and establishment of a mechanism to challenge inappropriate prosecutions, to ensure that:

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

**Evidence of inappropriate arrests and prosecutions**

The challenges faced by police and prosecutors in effectively investigating and prosecuting cases of domestic abuse and other forms of VAWG are well documented. The evidence we have collated shows that victims’ unjust criminalisation can arise from police and prosecutors’ failure to identify victims at an early stage and, even when the context of VAWG is known about, police and prosecutors’ failure to ensure that any decision to arrest or prosecute a potential victim is properly informed by the context of their experience of VAWG.

Recent research by the Howard League for Penal Reform, based on evidence from five police forces, highlights the overuse of arrest for women accused of violence, and the need for the police to respond to incidents of alleged violence in a gender-informed way. [[6]](#footnote-6) This echoes Marianne Hester’s 2012 study which found that women were three times more likely to be arrested than their male partners in cases involving counter-allegations, often for violence used to protect themselves from further harm from their abuser.[[7]](#footnote-7)

Further evidence of inappropriate arrests and prosecutions is set out in the [Double Standard](file:///C%3A%5CUsers%5Ckatys%5COneDrive%5CDocuments%5CAAA%20Katy%20files%5CKSW%20consultancy%5CCurrent%20projects%5CCentre%20for%20Womens%20Justice%5CConsultations%5CCCB%20stat%20guidance%20consultation%5CDouble%20Standard) report. Participants in the research for that report described, for example, a cursory approach by the CPS, in which there is no attempt to take account of contextual domestic abuse when implementing the evidential and public interest tests in relation to a victim suspect. One lawyer with experience in criminal defence and prosecution work commented:

*In terms of the CPS, there is no ownership of cases. It is just a box ticking exercise, particularly in the lower level cases.*

The case of Maia, included in the [full Double Standard report](https://static1.squarespace.com/static/5aa98420f2e6b1ba0c874e42/t/6241a370051da468f5ba42d3/1648468856173/DS%2BFINAL%2BREPORT.pdf) (p.46), illustrates in detail how badly these cases can be handled by police and prosecutors, the particular vulnerability of migrant women, and the devastating impact that an inappropriate police and CPS response can have on women and their children.

**Distinct considerations for Black, Asian, minoritised and migrant women, disabled women and young women**

Black, Asian, minoritised and migrant women, as well as disabled women – including those with mental health needs, face additional barriers to accessing support and accessing justice in these cases. Young women and girls have distinct experiences that are often overlooked. The guidance must be amended to address these matters specifically, to help ensure equal treatment in relation to race, gender, disability and age.

In their Tackling Double Disadvantage 10-point Action Plan, Hibiscus Initiatives describe the ways in which intersectional discrimination and the interaction of criminal justice and immigration proceedings lead to additional disadvantage for Black, Asian, minoritised and migrant women in contact with the criminal justice system, and action that needs to be taken.[[8]](#footnote-8) These matters are explored in relation to victims of VAWG who are accused of offending, in our Double Standard report and in Pragna Patel’s appendix to our report on women who kill their abuser.[[9]](#footnote-9)

Research by Agenda and the Alliance for Youth Justice (AYJ) reveals how young women and girls’ experiences of violence, abuse and exploitation can drive them into the criminal justice system, where they find themselves punished for survival strategies and their response to trauma, and have limited access to specialist support despite extreme levels of need.[[10]](#footnote-10)

Research by the Prison Reform Trust with Keyring drew on the experiences of 24 women with learning disabilities in contact with, or on the edges of, the criminal justice system; and practitioners working within criminal justice, social care, and women's services.[[11]](#footnote-11) It found that abuse by men lay behind the offending behaviour of most of the participating women.

The revised guidance must be carefully reviewed in consultation with organisations led by and for Black, Asian, minoritised and migrant women, disabled women, and young women, to ensure the circumstances in which they can face unjust criminalisation due to their experience of Controlling or Coercive Behaviour are adequately addressed.

**No existing guidance on victims’ criminalisation, beyond self-defence and counter-allegations**

There is some police and CPS guidance on identifying the primary victim in cases involving counter-allegations at the scene of a domestic abuse incident, some of which is referred to in the statutory guidance. Local police guidance is sometimes inconsistent with this national guidance, and our experience suggests that in any event the guidance is frequently not followed. In cases where women are arrested for an offence that does not take place as part of a domestic abuse incident, it is even less likely that contextual domestic abuse will be taken into account in decisions to arrest or prosecute. CPS legal guidance on identifying Controlling or Coercive Behaviour[[12]](#footnote-12), and the earlier version of the Home Office Statutory Guidance Framework on Controlling or Coercive Behaviour[[13]](#footnote-13) both list relevant behaviour of the perpetrator as potentially including:

*Forcing the victim to take part in criminal activity such as shoplifting, neglect or abuse of children to encourage self-blame and prevent disclosure to authorities.*

This statement has been removed from the revised statutory guidance on Controlling or Coercive Behaviour and replaced with the more generic, ‘*Acts of coercion or force to persuade the victim to do something that they are unwilling to do*.’ The reference to criminal activity should be reinstated and expanded as part of a distinct section on victims’ criminalisation. In fact, the circumstances in which victims may be coerced into offending are broader than is suggested in this quotation.

In any event, it is notable that there is no police or CPS guidance on ensuring decisions to arrest or prosecute take account of contextual abuse and coercion. Beyond background information for criminal justice agencies about working with women involved in offending[[14]](#footnote-14), there is no specific police or CPS guidance on the need to consider contextual domestic abuse in relation to offences other than counter-allegations of use of force.

The statutory guidance must address this by including substantive content about the links between Controlling or Coercive Control and victims’ offending or alleged offending, with links to other relevant guidance.

1. [Home Office (2015) Controlling or Coercive Behaviour in an Intimate or Family Relationship: Statutory Guidance Framework](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/482528/Controlling_or_coercive_behaviour_-_statutory_guidance.pdf), p.4 [↑](#footnote-ref-1)
2. <https://eprints.glos.ac.uk/7797/> [↑](#footnote-ref-2)
3. Stark (2009) *Coercive Control. How men entrap women in personal life.* Oxford University Press [↑](#footnote-ref-3)
4. [Centre for Women’s Justice (2021) Women who kill: how the state criminalises women we might otherwise be burying](https://www.centreforwomensjustice.org.uk/news/2021/2/13/women-who-kill-how-the-state-criminalises-women-we-might-otherwise-be-burying) [↑](#footnote-ref-4)
5. [Centre for Women’s Justice (2022) Double Standard: ending the unjust criminalization of victims of VAWG](https://www.centreforwomensjustice.org.uk/double-standard) [↑](#footnote-ref-5)
6. [APPG on Women in the Penal System (2020) Arresting the entry of women into the criminal justice system: Briefing Two](https://howardleague.org/wp-content/uploads/2020/09/APPG-on-Women-in-the-Penal-System-briefing-2-FINAL.pdf) [↑](#footnote-ref-6)
7. [Hester, M. (2012) Portrayal of Women as Intimate Partner Domestic Violence Perpetrators](https://journals.sagepub.com/doi/10.1177/1077801212461428). Professor Hester studied the following three sample groups: (1) All women recorded by the police as sole domestic violence perpetrator in a heterosexual relationship (N=32); (2) a random sample of sole male perpetrators; and (3) a random sample involving 32 cases where both partners were recorded at some time as perpetrator. These different sets of cases were then compared to assess differences and similarities in the rate of arrest where allegations were made. Analysis showed that an arrest was three times more likely to follow where the allegations were made against a woman, than where they were made against a man. [↑](#footnote-ref-7)
8. [Hibiscus Initiatives (2022) Tackling Double Disadvantage: Ending inequality for Black, Asian, minoritised and migrant women – 10-point action plan for change](https://weareagenda.org/wp-content/uploads/2022/01/Double-Disadvantage-Action-Plan.pdf) [↑](#footnote-ref-8)
9. [Centre for Women’s Justice (2021) Women who kill: how the state criminalises women we might otherwise be burying](https://www.centreforwomensjustice.org.uk/news/2021/2/13/women-who-kill-how-the-state-criminalises-women-we-might-otherwise-be-burying); [Centre for Women’s Justice (2022) Double Standard: ending the unjust criminalization of victims of VAWG](https://www.centreforwomensjustice.org.uk/double-standard) [↑](#footnote-ref-9)
10. [Agenda & Alliance for Youth Justice (2021) ‘I wanted to be heard’: Young women in the criminal justice system at risk of violence, abuse and exploitation](https://weareagenda.org/i-wanted-to-be-heard/) [↑](#footnote-ref-10)
11. [Prison Reform Trust (2019) Out of the Shadows: Women with learning disabilities in contact with or on the edges of the criminal justice system](http://www.prisonreformtrust.org.uk/Portals/0/Documents/Out%20of%20the%20shadows.pdf) [↑](#footnote-ref-11)
12. [CPS Legal Guidance on Domestic Abuse, Controlling or Coercive Behaviour in an Intimate or Family Relationship (reviewed 30 June 2017)](https://www.cps.gov.uk/legal-guidance/controlling-or-coercive-behaviour-intimate-or-family-relationship) [↑](#footnote-ref-12)
13. [Home Office (2015) Controlling or Coercive Behaviour in an Intimate or Family Relationship: Statutory Guidance Framework](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/482528/Controlling_or_coercive_behaviour_-_statutory_guidance.pdf), p.4 [↑](#footnote-ref-13)
14. [Ministry of Justice (2018) Managing vulnerability: Women – Fact Pack](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721190/police-guidance-on-working-with-vulnerable-women-web.pdf); [Ministry of Justice (2018) A Whole System Approach for Female Offenders: Emerging evidence](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/719771/guide-to-whole-system-approach.pdf) [↑](#footnote-ref-14)