

Domestic Abuse Bill

Consultation Response

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Centre for Criminal Appeals

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About the Centre for Criminal Appeals

The Centre for Criminal Appeals is a law charity that fights miscarriages of justice and demands reform.

We investigate miscarriages of justice by screening to find cases with merit and high potential impact, and then dig deep to find the fresh evidence that proves a conviction is unsafe or a sentence is unfair. We litigate by bringing cases to the Criminal Cases Review Commission, the Administrative Court and the Court of Appeal. We also work with former prisoners, campaigners, students, legal professionals and policy makers to ensure our justice system learns from its mistakes.

About the Women's Justice Initiative

The Women's Justice Initiative represents severely and multiply disadvantaged women who are seeking to challenge their sentences or convictions.

Specifically, the Women's Justice Initiative represents:

- Women imprisoned for minor, non-violent offences
- Women sent to prison instead of being given the help they need at a psychiatric hospital
- Women imprisoned for crimes which were actually an act of self-defence against an abuser
- Innocent women prisoners, especially those whose 'crime' was in fact accidental or the result of natural causes.

About the Domestic Abuse Bill Consultation

More can be read about the consultation on the Government's website here:

<https://consult.justice.gov.uk/homeoffice-moj/domestic-abuse-consultation/>

About the Authors

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Executive Summary

The Centre for Criminal Appeals is pleased to contribute to the consultation on the proposed Domestic Violence and Abuse Bill, and has responded to the questions we feel best placed to answer in the subsequent document. Our expertise is in dealing with post-conviction criminal cases, and so our responses are focused on providing better outcomes for survivors of domestic abuse who have been convicted and sentenced in the courts of England and Wales.

Our main recommendations are as follows:

- 1. Given that the proportion of women in prison who have survived a history of abuse is exceedingly high, more training is needed of judges and magistrates to fully understand the links between domestic abuse and offending.**
- 2. This training should be trauma-informed and should recognise the difficulties facing women with experiences of abuse when providing evidence and testifying in criminal cases.**
- 3. More support is needed for women who are survivors of abuse who are currently serving custodial sentences. There is too little support available, and what there is, is often underfunded and patchy across the women's estate.**
- 4. Domestic abuse should be explicitly listed as a mitigating factor in Sentencing Guidelines, in order to support judges and magistrates to consider abuse properly when sentencing female survivors.**

Responses

Chapter 1: Promoting Awareness of Domestic Abuse

7. Question: Which statutory agencies or groups do you think the UK Government should focus its efforts on in order to improve the identification of domestic abuse? Please tick the top 3 from the list.

- Armed forces
- Children's services
- Court staff
- Education professionals (for example teachers, school staff)
- Fire brigade
- Health professionals
- Housing staff
- Jobcentre staff
- Judges/magistrates (1)
- Police (3)
- Probation/Criminal Rehabilitation Company staff
- Prosecutors (2)
- Providers of adult social care
- Commissioners of adult social care services (local authorities and clinical commissioning groups)
- Social workers
- Other – please state
- Don't know/no answer

8. Question: In addition to improving training programmes and introducing guidance, what more can the Government do to improve statutory agencies' understanding of domestic abuse?

The consultation noted the improved response of police officers in, for example, their recognition of domestic abuse and treatment of victims and survivors. Although this is encouraging, in numerous cases taken on by the Centre for Criminal Appeals, and the Women's Justice Initiative in particular, there has been a clear and sometimes shocking lack of understanding and empathy on the part of judges dealing with cases involving domestic abuse. Our recommended improvements are twofold:

1 – Trauma-informed training for judges and magistrates on the links between domestic abuse and offending

In one recent case we have seen, a Judge makes the following remarks with regards to a documented survivor of domestic abuse who was convicted of harming her abuser:

“It is clear that that was not a happy marriage. The police log shows that there was a history of some incidents and altercations between you and your husband...I accept that the circumstances of your marriage was such that both you and indeed your husband would have felt feelings of tension at various times.”¹

In this case, the judge characterises their relationship as an unhappy marriage, rather than an abusive one, with severe adverse consequences for our client, who was mis-sentenced as the aggressor in the relationship.

The presence of domestic abuse can have enormous impact on a criminal case particularly with regards to evaluating culpability, and lack of awareness of this can risk re-victimising survivors of abuse by criminalising them. The Centre often sees cases where the person involved has clearly committed a crime; there may be no doubt of this, and of the guilty verdict. However, if when deciding on sentence the judge presiding over the case has a poor understanding of the links between domestic violence and offending, this can lead to a miscarriage of justice in the form of an unfair sentence.

To improve understanding of domestic abuse there needs to be training for judges in this area, to equip them with a greater understanding of the fundamental effect of traumatic experiences on a person’s state of mind and ensuing actions. We know there are strong links between women’s experiences of abuse and their offending, and survivors can be trapped in vicious cycles of victimisation. This is well documented in the Prison Reform Trusts’ 2017 publication “There’s a reason we are in trouble: Domestic Abuse as a driver to women’s offending”. Women commit crime in a different pattern to men; for example, the amount of violent crime they commit is far less. Also 48% of women prisoners report having committed offenses to support another person’s drug habit (compared to 22% of male prisoners).²

Women are also more likely than men to be victims of domestic abuse and coercive or controlling behaviour by a partner, and survivors are extraordinarily overrepresented in the female prison population. Some 57% of women in prison report having been victims of domestic violence as adults,³ a number mirrored in our internal monitoring of the women who write to us for support in appealing sentences and convictions.⁴ For some women, this abuse can be the direct force compelling them to commit a crime in the first place, either because they were made to do so by their partner, or because they were no longer able to suffer the abuse, which may have been taking place for years.

¹ Citation not included to protect anonymity of client.

² Prison Reform Trust (2017). ‘There’s a reason we are in trouble: Domestic Abuse as a driver to women’s offending’, p7

³ Ibid.

⁴ Centre for Criminal Appeals Intake Monitoring Spreadsheet. Data up to date as of 14th May 2018.

2 – Training for judges and magistrates on the links between trauma and testimony

It is crucial for judges to realise that victims of domestic abuse may be unable to engage in court processes in the traditional manner. This could manifest itself in many ways; one example is the process of giving evidence. Judges in cases we have seen have accused defendants of being unreliable or outright lying due the defendant's lack of clear recollection of the situation; this demonstrates a damaging lack of understanding of the effect of trauma on memory.⁵

The credibility of a witness is key to determining whether or not their evidence is given any weight in a criminal trial. Witnesses are more likely to be perceived as reliable and credible if they provide accounts rich in detail, while accounts that are lacking in such detail are regarded with scepticism. Consistency is another key indicator of perceived reliability, with more discrepancies being correlated with less credibility.⁶ Impeachment by highlighting inconsistencies is a common tool used to discredit witnesses in criminal trials. Whilst establishing credibility must be a scrupulous task performed by the court, experiences of trauma significantly impact on a witness or defendant's ability to make themselves credible in the eyes of the court.

Trauma has been extensively documented as having a significant impact on recollection. It can produce fragmented memories, lack of detailed recall and difficulty in telling a chronological sequence of events, all placing survivors of abuse in an adverse position for proving their believability to a court of law.⁷ The Centre for Criminal Appeals has seen over and over again how the traumatic consequences of surviving abuse has led to disproportionately harsh sentencing for women who have committed crime, as their narratives are less likely to be believed in court.

Further, judges should be aware that not all victims will present in the same way. Although some may appear obviously vulnerable and defenceless, these are not the only victims who are deserving of sympathy and confidence in their testimony. In a recent family court case we had sight of, the judge described the victim's husband as measured in his evidence, while repeatedly accusing the victim of lying, and stating she was not the 'shrinking violet' or frightened and vulnerable victim, as she had sought to portray herself.⁸ This was based on the fact that the woman had argued back to her husband and defended herself when he abused her. The judge's statement betrays a belief that there is

⁵ Ellison, L & VE Munro (2016). Taking Trauma Seriously: Critical Reflections on the Criminal Justice Process. *International Journal of Evidence and Proof*, 21(3), 183-208.

⁶ Borckardt J, E Sprohge & M Nash (2006). 'Effects of the inclusion and refutation of peripheral details on eyewitness credibility', *Journal of Applied Social Psychology*, 33(10), 2187-2197.

⁷ Ellison, L and VE Munro (2016).

⁸ Citation not included to protect anonymity of client.

such a thing as a perfect victim, one who is utterly defenceless and never fights back. The reality is rarely so lacking in nuance.

Judges and magistrates, who are in positions of such power over people's lives and freedom, must have an understanding of the above and should be encouraged to empathise with victims of abuse. Judicial training to address this gap in knowledge should include face-to-face discussion with victims of domestic violence, in order to hear first-hand how traumatic these experiences can be.

Chapter 2: Protect and Support Victims

10. Question: We are in the process of identifying priority areas for central Government funding on domestic abuse. Which of the following areas do you think the UK Government should prioritise? Please select up to 3.

- Advocacy for victims to enable them to stay safely in their own home (Independent Domestic Violence Advisors or their equivalent)
- Therapeutic services to help victims of domestic recover from their experience
- Accommodation services
- Helpline services for those affected by domestic abuse to call for advice and support
- Interventions embedded in health
- Perpetrator programmes which aim to change offenders' behaviour and stop reoffending
- Rolling out of new multi-agency approaches
- Other (free text) –

There should be greater support for women in prison who are survivors of abuse. Given the prevalence of abuse survivors amongst women who are imprisoned, and the aforementioned links between domestic abuse and offending, well-funded specialist services are desperately needed inside the women's estate, to deal with these traumatic histories to support rehabilitation.

Don't know/no answer

11. Question: What more can the Government do to encourage and support effective multi-agency working, in order to provide victims with full support and protection? Please select up to 3.

- Guidance
- Incentives through funding
- Sharing effective practice
- Training

Other (free text)
None of the above
Don't know/ No answer

12. Question: What more can the Government do to better support victims who face multiple barriers to accessing support.

Allegations of abuse that have criminal implications are serious matters and need to be investigated fully. The Centre for Criminal Appeals has dealt with inquiries from multiple women who detail having been arrested on false reports of abuse from their male partners, in an attempt to gain custody of children. The police have a statutory duty to fully investigate both sides whenever abuse is alleged, however it frequently fails to do so. This inhibits the police from making informed decisions about who is the aggressor in a relationship.

The difficulty with many abuse cases, especially abuse that doesn't result in obvious physical injury, is that it is often one person's word against another's. We recognise that for many women who are the victims of abuse, collecting evidence of the same can be incredibly difficult when seeking redress through the criminal justice system. We do not recommend that additional evidentiary barriers to support are put in place, as we believe this would adversely affect survivors of abuse from accessing services and progressing with a criminal case against an abuser.

Nevertheless, we have dealt with cases where an abusive partner has been able to hoodwink the court by pointing the finger at their partner first. In one of our recent cases, a woman was convicted of assault after scratching her husband with a knife and causing him a very minor injury. She was sentenced to several months in prison. There was a clear history of domestic abuse in the marriage, including sexual assault and financial control, in which she was the victim and her husband was the perpetrator. If there had been proper investigation when her husband first reported her crime, this would have been discovered – there was abundant evidence of the abusive relationship – and should undoubtedly have impacted her case and sentence.

In another recent case, a woman was sentenced to a one year community order for common assault after slapping her husband, despite having suffered 5 years of physical abuse and coercive and controlling behaviour at his hands. Insufficient investigation into the circumstances surrounding her crime led to the criminalisation of a woman who was already a victim of abuse. It is hard to justify that these charging decisions can truly be in the public interest.

13. Question: How can we work better with female offenders and vulnerable women at risk of offending to identify their domestic abuse earlier? Please select top 3.

Criminal justice agencies to adopt appropriate enquiries into history of abuse at each stage of the criminal justice process (2)

Dedicated support and/or IDVAs in women's services

Encourage the use of schemes which divert vulnerable women out of the criminal justice system (where appropriate) and into services (1)

Improve availability of support for domestic abuse victims in prisons (3)

Support signposting into appropriate services for women who come into contact with the police

Don't know/no answer

Other (free text) –

The overuse of custodial sentences for women who commit low level, non-violent crime is prolific. The number of women in prison has more than doubled since 1993 and yet 83% of women in prison have committed a non-violent offence, the most common of which being theft.⁹ Community sentences for women have halved in a decade and BAME women are more likely to be convicted at magistrates court than white women.¹⁰

Against this bleak backdrop of the increasingly trigger happy manner in which prison sentences are given to women, it is imperative that vulnerable women with histories of abuse are not revictimised by unduly harsh custodial sentences. We believe this can be achieved by explicit reference to a history of abuse as a mitigating factor at sentencing.

The Sentencing Council's Guidelines on the Overarching Principle of Seriousness in a crime, state that the following factors indicate significantly lower culpability:

- *A greater degree of provocation than normally expected*
- *Mental illness of disability*
- *Youth or age, where it affects the responsibility of the individual defendant*
- *The fact that the offender played only a minor role in the offence.*

The personal mitigation guidelines also make reference to Section 166(1) of the Criminal Justice Act 2003 making provision for a sentence to take into account any matters that 'in the opinion of the court, are relevant in mitigation of sentence'. These matters can include such things as expressions of remorse or admissions in police interview.¹¹

Whilst it is clear that this guidance gives ample room for judges and magistrates to consider an abusive history as mitigation when considered relevant to the offence, it relies on those judges and magistrates to have knowledge of the impacts of domestic abuse in order to properly take it in to account. In women's cases where offenses were

⁹ Bromley Briefings Prison Factfile. Prison Reform Trust (2017), p34

¹⁰ Ibid., p35

¹¹ Overarching Principles: Seriousness. Sentencing Guidelines Council (2004), p7.

committed on behalf of or because of an abuser, it is particularly important the court has guidance on how this experience of abuse serves to mitigate culpability.

By including explicit reference to domestic abuse in the Guidelines issued by the Sentencing Council, the government will ensure that the right questions are being asked of female offenders with regards to their histories of abuse, to ensure the courts get the level of culpability for any given offence right.

14. Question: How can we make greater use of women-specific services to deliver interventions in safe, women-only environments? Please select top 3.

- Availability of a GP at women-only services
- Availability of a nurse at women-only services
- Child contact sessions so that women who are not living with their children can have supervised access to their child
- Delivery of health interventions such as mental health and substance misuse treatment at women-only services (1)
- IDVAs located or linked to women-only services
- Improving access to benefits, finance and accommodation advisors at women-only services (2)
- Provision of employer interventions at women-only services to help individuals become work ready, including offering work experience and/or mentoring
- Don't know/no answer
- Other (free text) –

For women who have been given community orders rather than custodial sentences, greater access is needed to probation and community licence conditions at women-only services. There are examples of these specialist services for women, but they are often patchy and short term, and rarely standardised.¹²

In a recent case we saw, a woman was given a 12-week prison sentence after she breached the terms of her community sentence. However, the sentence had been breached due to her childcare commitments and financial problems following relationship breakdown. She had been refused an individual community placement, and was not given a placement at a women-only project. This could have had greater success and been more responsive to her gender-specific needs, as in this case, and many others, childcare was a factor in her breaking the conditions of her community sentence. Recalling her to prison was a great waste to the public purse and an injustice for a woman attempting to juggle legitimate commitments.

¹² Ministry of Justice, Unpaid Work/Community Payback Service Operating Manual (2010), p6.

It is still the case that women are usually the primary caregivers for their own children. Moreover, people who commit crimes are more likely to suffer from complex and multiple disadvantage, which in turn makes it more likely that they will be lone parents. For this reason, women who are mothers are impacted in ways men may not be by receiving custodial and community sentences. This is well detailed by research conducted by Rona Epstein for the Howard League for Penal Reform.¹³

A community sentence at a women-only service, which takes into account this greater likelihood of women's caring responsibilities, could make greater allowance for this, and avoid women being imprisoned after breaching the terms of their sentence for reasons beyond their control.

15. Question: In addition to reviewing who may be eligible for the Destitute Domestic Violence Concession, what other considerations could the Government make in respect of protecting domestic abuse victims with no recourse to public funds?

The situation is particularly difficult for survivors of domestic abuse who are not UK nationals. Their right to stay in this country may be inextricably linked to their relationship with their partner, such as being here on a family or spousal visa. If this is no longer a possibility, as it is not safe for them to have contact with their partner, their status may be uncertain and they will need support in navigating immigration services.

There is also the obvious link between offending and deportation; convicted foreigners may lose the right to remain in the UK, depending on the severity of their sentence. However, being deported to their country of birth can carry an accompanying risk of culturally-specific abuses such as honour-based violence. The government could provide greater support to people at risk of this by taking this into consideration when they are going through immigration processes.

35. Question: What practical barriers do domestic abuse victims face in escaping or recovering from economic abuse and how could these be overcome?

In a recent fraud case received by the Centre for Criminal Appeals, a woman had been asked by her partner, who was also abusing her physically, emotionally and sexually, to open a bank account in her name to which he had complete access. He used this account for criminal activity, initially without her knowledge as she had been led to believe the transactions were legitimate. She eventually reported the crime to the police, and showed remorse. At the time she had been in a vulnerable state of isolation and alcohol dependency, which was encouraged by her partner. He also had total financial control over her and her children. Despite this, and evidence that she had tried to turn her life

¹³ Epstein, R. (2014). Mothers in prison: The sentencing of mothers and the rights of the child. The Howard League for Penal Reform "What is Justice" Series.

around, she was given a custodial sentence of several years for her part in the committing of this offence. In escaping this abuse she had to face the barriers of being isolated from family members, having no obvious means of escape, and a fear of prosecution as she was by then implicated in the crime.

This might have been overcome by financial services providing means for abuse victims to flag their accounts as suspicious, triggering an internal investigation, without changing access to the account (since this could alert the abuser and have adverse consequences for the victim).

A situation such as the above could also have been overcome by having domestic violence as a statutory mitigating factor in sentencing. The financial abuse she suffered was clearly linked to her fraud conviction, and the offense arguably would not have been committed had she not been victim to this abuse.

Chapter 3: Pursue and Deter Perpetrators

37. Question: How can we continue to encourage and support improvements in the policing response to domestic abuse across all forces and improve outcomes for victims?

In cases of domestic abuse, greater effort must be made by police (and courts) to recognise who is the aggressor in the relationship. In the case mentioned previously, a young woman who attacked her husband and caused him a minor injury was taken to be the aggressor, seemingly due only to the fact that he had reported her to the police and could show them a visible physical injury. Despite the quantity of evidence demonstrating that she was being abused, the courts failed to take this into account when sentencing her. There should have been more investigation by the police into these allegations; they had failed to recognise the true aggressor. In a similar case, a woman we worked with was unwilling to do a Trial of Issue (also known as a Newton Hearing¹⁴) prior to pleading guilty, due to her fear that her narrative of abuse at the hands of her accuser would not be believed.

Whilst special measures are available in criminal courts for witnesses and victims, defendants are specifically excluded from receiving the same statutory protections as their accusers, even in cases where defendants are themselves vulnerable due to a history of domestic violence. They are left to rely on the general discretion of individual courts to ensure a fair trial but this doesn't usually resolve itself in the defendant's favour.

¹⁴ When conflicting evidence is offered to the judge, a Trial of Issue is held for the judge to determine the true facts of a case

39. Question: Is there more this government could do to explain the range and remit of existing measures for victims to help support them in the criminal justice process? Please select one.

Yes, please describe

The government should include those accused of crime, when abuse has been alleged or has been disclosed as part of a pre-sentence report, in its dissemination of information on the range of support services available to them as victims of abuse.

No

Don't know/no answer

45. Question: Do you think there is further action the government could take to strengthen the effectiveness of the controlling or coercive behaviour offence? Please select one.

Yes –

The range of evidence that is admissible for the offence of controlling or coercive behaviour should be expanded. Despite the fact that there is a detailed list of examples of behaviour provided in CPS guidelines, this does not necessarily mean that examples of such behaviour will be accepted by a judge. In a recent family court case we had sight of, there was clear controlling behaviour exhibited by a husband to his wife; he had absolute control their finances, would not allow her to get a job, and would not allow her access to her social media accounts so she could talk to her family, among other things. However, the judge alleged that control cannot have been exerted as the husband would give the wife money that she was able to choose to spend how she chose. However, he restricted her budget so severely that this was a meaningless 'freedom'. Examples of coercive and controlling behaviour should be taken more seriously by the relevant authorities.

48. Question: Please share any other views on how to ensure domestic abuse and its impact on children are taken into account in sentencing?

There is such a high prevalence of domestic abuse among women offenders that it's crucial in sentencing, and in all proceedings, that explicit reference is made to the presence of domestic abuse as a mitigating factor – possibly by making it a statutory mitigating factor. This should help prevent the possibility that women victims are doubly victimised by receiving a harsh sentence. It should also encourage those who have suffered domestic abuse and committed offences as a result, to disclose that abuse during proceedings rather than after the fact, for example in a pre-sentence report.

Chapter 4: Improve Performance

58. Question: Please select which of the following you believe should be priorities for improving data collection. Please choose up to 3.

- Improving the collection and reporting of data on when domestic abuse is a feature of a case/intervention
- Improving collection and reporting of data relating to the gender and relationship of the perpetrator and victim
- Improving data to enable better tracking of outcomes in domestic abuse cases/ intervention
- Linking data to enable better tracking of interventions and reoffending
- Linking data to enable better understanding of the interactions/ relationships between domestic abuse and other types of offending
- None of the above
- Don't know/ No answer
- Other (free text) –

All of the above are crucial and should be considered as priorities. Data gathering for domestic abuse is deeply flawed and needs improving across the board.

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The Centre for Criminal Appeals is a law charity that fights miscarriages of justice and demands reform.

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