

Murder Sentencing Ministry of Justice – Consultation

4 March 2024

About APPEAL's Women's Justice Initiative

1. APPEAL is a non-profit law practice committed to fighting miscarriages of justice and demanding reform. We provide investigation and legal advocacy for victims of unsafe convictions and unfair sentences who cannot afford to pay for a lawyer themselves. We use individual cases as leverage for system-wide criminal justice reform by educating the media, parliament, criminal justice policy makers, the legal profession and the public about how and why miscarriages of justice occur and what needs to change to stop them.
2. APPEAL's Women's Justice Initiative (WJI) uses strategic litigation to appeal sentences and convictions for women experiencing severe disadvantage in the criminal justice system; women who are victims of domestic abuse, whose mental health has been ill-considered, and who are given damaging short sentences. We empower women to become advocates for reform and use casework to campaign for changes to the law.
3. The Women's Justice Initiative represents:
 - a. Women imprisoned for minor, non-violent offences when non-custodial options might have been more appropriate;
 - b. Women sent to prison in cases where mental health or learning disabilities were not adequately considered in court;
 - c. Women who are victims of domestic abuse/coercive control/exploitation, where this was relevant to the offence but not adequately explored at trial; and
 - d. Innocent women prisoners, especially those whose 'crime' was in fact accidental or the result of natural causes.
4. One area of particular interest to APPEAL's Women's Justice Initiative is the sentencing of women victims of domestic abuse who go on to kill their partners, who are often then convicted of murder. We are grateful for the opportunity to respond to this consultation paper on the proposed changes to murder sentencing (Consultation Paper).

Context

5. Following Clare Wade KC's ground-breaking report into sentencing for domestic homicide,¹ we were pleased to see the Government move to implement some of her recommendations, particularly experience of coercive control as a mitigating factor.²
6. The proposals covered by this Consultation Paper, however, pose significant risk to victims of domestic abuse who kill their partners. Most domestic homicides are men killing women, usually in the context of an abusive partner killing their abuse victim.³ Women abuse victims who kill their abusive partners are a vulnerable and largely misunderstood minority.⁴ Where they have been convicted of murder, commonly their trial arguments such as self-defence, loss of control and/or diminished responsibility have failed, often in unfortunate circumstances. If they are to be convicted of murder, the vast difference in their situations to abusers who kill their partners must be addressed in sentencing. While there may be an intention to protect this class of people from the harshest implications of the proposals, we have real concern that they will end up worse off should these changes be enacted. These unintended consequences will be serious and to the detriment of victims of domestic abuse.
7. APPEAL's experience in representing women victims of domestic abuse who have been convicted of the murder of their partners reflects the wider research conducted on such cases, such as by the Centre for Women's Justice.⁵ Domestic homicide committed by victims of abuse is vastly different in history, context and consequence than domestic homicide committed by perpetrators of abuse. Domestic abuse, and coercive and controlling behaviour in particular, is not well understood by many

¹ Clare Wade KC *Domestic Homicide Sentencing Review: Independent Review* (March 2023) <https://assets.publishing.service.gov.uk/media/6411ce52d3bf7f79df1aa9c4/domestic-homicide-sentencing-review.pdf>

² Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2023.

³ Typically in domestic homicide cases, women are victims, as evidenced by Homicide Index data for the year ending March 2020 to the year ending March 2022 finding that 67.3% of the victims of domestic homicide were female. In fact, "of the 249 female domestic homicide victims, the suspect was male in the majority of cases (241) and in the majority of female domestic homicides, the suspect was a male partner or ex-partner (74.7%)." See Census 2021 "Domestic abuse victim characteristics, England and Wales: year ending March 2023"

⁴ Research conducted by the Centre for Women's Justice indicates that 77% of women who killed their partners had been victims of violence and abuse by the deceased: Centre for Women's Justice *Women Who Kill: How the State criminalises women we might otherwise be burying* (February 2021) <https://www.centreforwomensjustice.org.uk/women-who-kill>

⁵ Centre for Women's Justice *Women Who Kill: How the State criminalises women we might otherwise be burying* (February 2021) <https://www.centreforwomensjustice.org.uk/women-who-kill>

members of the legal profession. As such, we are wary of changes to sentencing practice that assume that courts will have little trouble distinguishing between the perpetrator and the victim of abuse. While we understand the motivation to increase sentences for perpetrators of domestic abuse who kill, we remain unpersuaded that unintended consequences for victims of abuse can be avoided.

Section 1 – A minimum term starting point for cases of murder preceded by controlling or coercive behaviour against the murder victim

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?

8. In response to the first question, our answer is **no**.

Unintended impact on victims of domestic abuse who kill

9. Increasing the starting point risks the unintended consequence of disadvantaging women defendants who have been convicted of the murder of their partners, undermining the Government's intention. Our experience is that coercive and controlling behaviour is poorly understood, by the public and some members of the legal profession. We do not believe that victims of domestic abuse who kill will be reliably identified as such, and we have concerns that, to the contrary, such victims could instead be identified as perpetrators of coercive and controlling behaviour.
10. As media and courtroom narratives often portray women that kill their partners as manipulative, and the victims as innocent parties, the court may misinterpret there is a history of controlling behaviour on the abuse victim's part to warrant a higher starting point.⁶
11. See, for example:
 - a. Sally Challen killed her abusive husband after years of being controlled and humiliated by him. Her son, David Challen, found the criminal justice system painted her as "a controlling and jealous lover who planned to kill her husband."⁷ Challen was a "textbook

⁶ Centre for Women's Justice *Women Who Kill: How the State criminalises women we might otherwise be burying* (February 2021) <https://www.centreforwomensjustice.org.uk/women-who-kill>

⁷ The Observer, "Justice System smeared our mother, say Sally Challen's sons" (8 June 2019): <https://www.theguardian.com/law/2019/jun/08/sally-challen-sons-justice-system-smeared-our-mother>

case”⁸ of a jealous housewife killing her husband. She was eventually successful in appealing her conviction for murder and the prosecution accepted a manslaughter plea based on diminished responsibility connected to the coercive and controlling behaviour perpetrated by her husband.⁹

- b. Emma-Jayne Magson was a 23-year-old woman who stabbed her boyfriend James Knight to death after they rowed during a night out. Magson was described as, “cold, brutal and manipulative”¹⁰ for delaying medical help to her dying boyfriend and in effect “sacrificing” him. During re-trial,¹¹ “the Crown Prosecutor made reference to [Magson] as a typical council estate girl who had experienced ‘50 one night stands’”.¹² Despite evidence that Knight had a history of being violent and abusive,¹³ the judge stated he was sure that Magson’s account of being strangled by Knight was untrue, and that most acts of violence in the relationship had been perpetrated by her, not him.
- c. Fariessia Martin was a 22-year-old woman who killed her boyfriend Kyle Farrell after a night out, by stabbing him in the chest. There was a history of abuse by Farrell that was witnessed by family and

⁸ The Guardian, “My Mother, Sally Challen, was branded a cold-blooded killer. At last, she has justice” (8 June 2019) <https://www.theguardian.com/society/2019/jun/08/my-mother-sally-challen-killed-my-father-finally-justice>

⁹ *R v Challen* [2019] EWCA Crim 916.

¹⁰ The Guardian, “Emma-Jayne Magson handed life sentence for murdering boyfriend” (7 November 2016) <https://www.theguardian.com/uk-news/2016/nov/07/emma-jayne-magson-handed-life-sentence-murdering-boyfriend-james-knight>

¹¹ Magson was originally convicted of murder. A retrial was ordered due to new evidence as to Magson’s mental health (*Magson v R* [2020] EWCA Crim 27) but she was once again found guilty of murder, by a 10-2 majority verdict. A further appeal on the basis of the householder defence failed (*Magson v R* [2022] EWCA Crim 1064).

¹² Centre for Women’s Justice *The Emma-Jayne Magson Case: Misogyny is Alive and Well in the Criminal Justice System* (8 April 2021) <https://www.centreforwomensjustice.org.uk/new-blog-1/2021/4/8/the-emma-jayne-magson-case-misogyny-is-alive-and-well-in-the-criminal-justice-system>

¹³ CCTV was shown at trial of Knight violently pushing Magson into a parked car in a seemingly unprovoked attack. There was also CCTV that showed Knight suddenly and violently pushing Magson to the ground outside the nightclub on the night of the offence. Further, there were a significant number of text messages which disclosed Knight’s abusive behaviour to his previous partner. There was evidence of the deceased’s previous violence towards the defendant and his regular abusive language towards her, including typically describing her as a ‘slag’, calling her ‘fat’ when she was pregnant with their child, and telling her to lose weight. Medical evidence, including red marks and bruising around her neck and a pathologist report, supported the defendant’s account that she was strangled by the deceased. Centre for Women’s Justice *The Emma-Jayne Magson Case: Misogyny is Alive and Well in the Criminal Justice System* (8 April 2021) <https://www.centreforwomensjustice.org.uk/new-blog-1/2021/4/8/the-emma-jayne-magson-case-misogyny-is-alive-and-well-in-the-criminal-justice-system>

friends.¹⁴ Despite the years of abuse, the judge stated “the person at the centre of this tragedy is Kyle Farrell,” ignoring the years when Martin was a victim. Martin was originally convicted of murder, but her conviction was quashed in light of fresh psychiatric and psychological evidence regarding the abuse she suffered,¹⁵ and ahead of the retrial, the prosecution accepted a plea to manslaughter.

Women already receive damaging long sentences

12. Women are already receiving high sentences, so an increase in the starting point is not necessary. The Centre for Women’s Justice has reported that women are already serving longer sentences in comparison to a decade ago.¹⁶ The Prison Reform Trust has found that “in 2015 women serving sentences of four years or more made up over a quarter (28%) of the sentenced population (910 women). By 2022 women serving those sentences increased to a third of the sentenced population (858 women).”¹⁷ In addition, “research shows at least 109 women have been given long or life sentences under joint enterprise laws despite often being marginal to the violent event, not being at the scene or, in the majority of cases, never having engaged in any physical violence.”¹⁸
13. Abused women who kill are already likely to receive long sentences with the application of aggravating factors like using a weapon. Women are more likely than men to use a weapon to kill their partner, due to physical differences. Researchers looked at 92 cases¹⁹ where women killed men between April 2008 and March 2018, and found in 71% of the cases, the defendant had stabbed the deceased. As will be discussed further below, the use of a weapon as an aggravating factor thus disproportionately impacts women.

¹⁴ The Guardian, “Intimate Terrorism: how an abusive relationship led a young woman to kill her partner” (31 October 2019) <https://www.theguardian.com/society/2019/oct/31/intimate-terrorism-domestic-abuse-coercive-control-farieissia-martin>

¹⁵ *Martin v R* [2020] EWCA Crim 1798.

¹⁶ Centre for Women’s Justice *Women Who Kill: How the State criminalises women we might otherwise be burying* (February 2021) <https://www.centreforwomensjustice.org.uk/women-who-kill>

¹⁷ Prison Reform Trust *Why Focus on Reducing Women’s Imprisonment?* (August 2022) <https://prisonreformtrust.org.uk/wp-content/uploads/2022/08/Why-women-2022-briefing.pdf>

¹⁸ Centre for Women’s Justice *Women Who Kill: How the State criminalises women we might otherwise be burying* (February 2021) <https://www.centreforwomensjustice.org.uk/women-who-kill>

¹⁹ The Guardian, “Lawyers seek justice for women jailed for killing abusive partners” (13 February 2021) <https://www.theguardian.com/global-development/2021/feb/13/justice-is-failing-women-forced-to-kill-male-abusers-to-stay-alive>

14. The mental anguish women prisoners face in prison will only be exacerbated with increases in sentences. As found by the Prison Reform Trust, “women are much more likely than men to self-harm whilst in prison. In 2022, women made up 29% of all self-harm incidents despite making up only 4% of the prison population.”²⁰
15. Further, women are more likely than men to:
 - report feeling suicidal on entry to prison, 25% to 12%;
 - report feeling depressed on entry to prison, 55% to 37%;
 - report other mental health issues on entry to prison, 40% to 25%; andreport having a problem with drugs or alcohol on entry to prison, 25% to 13%.²¹
16. The impacts of long-term and indeterminate sentences are particularly harsh on women. Research demonstrates that women serving long sentences report an acutely more painful experience than men, which is linked to separation from their children and family, loss of relationships, experiences of trauma and abuse in pre-prison life, the strain on their mental health, and the lack of control, privacy and trust inside prison.²²
17. As explained above, there is serious risk that women who have suffered abuse would be unfairly sentenced with a proposed new starting point. Allowing the proposed amendment would only serve to exacerbate the problem of women receiving increasingly long sentences, by reducing the flexibility judges currently have to sentence appropriately.

Longer sentences do not serve important purposes of sentencing

18. In his foreword to this Consultation Paper, the Lord Chancellor has stated that the Government’s intention in considering the proposed amendments to the sentencing procedure is to tackle violence against women and girls. The Executive Summary of this Consultation Paper also states that it is important to ensure that “[e]veryone should feel safe in their own home”. However, there has been no evidence advanced to show that increasing

²⁰ Prison Reform Trust, “Women in Prison” <https://prisonreformtrust.org.uk/project/women-the-criminal-justice-system/>

²¹ Prison Reform Trust, *Why Focus on Reducing Women’s Imprisonment?* (August 2022) <https://prisonreformtrust.org.uk/wp-content/uploads/2022/08/Why-women-2022-briefing.pdf>

²² Crewe, B., Hulley, S., & Wright, S. (2017). *The gendered pains of life imprisonment*. British Journal of Criminology, 57(6), 1359–1378. <https://doi.org/10.1093/bjc/azw088>. See too Vince, C., & Evison, E. (2021). *Invisible Women: Understanding women’s experiences of long-term imprisonment*. Prison Reform Trust. <https://prisonreformtrust.org.uk/publication/invisible-women-understanding-womens-experiences-of-long-term-imprisonment>

the starting point in these cases would result in increased protection of women and girls from violence in their homes.

19. Longer sentences do not help with deterrence. Research commissioned by the Sentencing Council found there was “little evidence to justify increasing a sentence... purely for the purpose of deterrence” and “the current evidence does not suggest that increasing the length of prison sentences is an effective way to reduce reoffending.”²³ In fact, as Roberts and Frase write,²⁴ “increments in sentence length appear to have little or no demonstrable increased deterrent effects on subsequent re-offending; for some offenders, longer prison terms increase the odds of further crime.” Further, the research commissioned by the Sentencing Council found that longer prison sentences do not work as a deterrent because offenders do not believe they will be caught with police detection rates so low.²⁵ This is because deterrence “comes from the certainty of detection, not the harshness of the punishment.”²⁶
20. The way current prisons are run is not conducive to rehabilitation, so increased sentences are unlikely to serve this purpose of sentencing either. The Howard League considers the continued use of restricted regimes, initially imposed in response to the pandemic, can hamper the rehabilitation of prisoners.²⁷ Prisoners can be left in their cells for up to 23 hours, therefore unable to exercise, receive visits or attend education classes. Being left in cells serves as a barrier for prisoners hoping to access a healthy and supportive environment, “thereby preventing them from moving on from crime and returning to the community” without risk.

Q1.2 and 1.3: If a minimum term starting point were to apply to cases of murder preceded by controlling or coercive behaviour against the murder victim, what should the starting point be? And should this apply to all cases where there was

²³ Jay Gormley, Melissa Hamilton and Ian Belton, *The Effectiveness of Sentencing Options on Reoffending*, The Sentencing Council (2022) <https://www.sentencingcouncil.org.uk/wp-content/uploads/Effectiveness-of-Sentencing-Options-Review-FINAL.pdf>

²⁴ Julian V. Roberts, Richard S. Frase, *Paying for the Past: The Case Against Prior Record Sentence Enhancements* (2019, Oxford Academic) <https://academic.oup.com/book/35283?searchresult=1>

²⁵ Jay Gormley, Melissa Hamilton and Ian Belton, *The Effectiveness of Sentencing Options on Reoffending*, The Sentencing Council (2022) <https://www.sentencingcouncil.org.uk/wp-content/uploads/Effectiveness-of-Sentencing-Options-Review-FINAL.pdf>

²⁶ Prison Reform Trust, “Blog: Stop Press! “More jail time not a deterrent”: (15 November 2022) <https://prisonreformtrust.org.uk/blog-stop-press-more-jail-time-not-a-deterrent/>

²⁷ Howard League for Penal Reform, “Written evidence submitted by the Howard League for Penal Reform to Labour Policy Forum consultation” (March 2023) <https://howardleague.org/wp-content/uploads/2023/03/Howard-League-Labour-Policy-Forum-consultation.pdf>

controlling or coercive behaviour or only to those cases where the controlling or coercive behaviour was at a high level of seriousness?

21. As above, we do not agree with a change to the minimum term starting point. APPEAL is concerned that a lack of nuanced understanding of coercive and controlling behaviour by some members of the legal profession would mean attempts to grade its seriousness could lead to anomalous outcomes.

Section 2 – A minimum term starting point for all murders committed with a knife or other weapon

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?

22. We strongly disagree with this proposal. We see little need and real cost in this punitive approach for all defendants. In particular, though, we have serious concerns about its unintended but disproportionate, discriminatory impact on women who kill their abusive partners.
23. Women are typically smaller than men, and this size difference means women are more likely to resort to using a weapon to defend themselves. This is likely a key reason why victims of abuse who kill fail in arguing self-defence when they use a weapon, often a kitchen knife, in response to an unarmed abusive partner whom they know to be capable of serious violence, as the use of a weapon can be seen as a disproportionate response.²⁸ It is better characterised, however, as the way women keep themselves alive. If the minimum term is increased, a woman defendant who narrowly fails in establishing self-defence would then face an exceedingly long sentence.
24. In two of the cases mentioned above, both Magson and Martin used a knife. Increasing sentences to account for the use of a weapon would disadvantage women defendants who are more likely to use weapons. Despite the Government's priority to protect abused women, women like Magson and Martin would not be protected with this new legislation, but rather burdened by it.
25. There is no evidence to support the need to increase the starting point based on the use of a weapon. Judges already have significant discretion when imposing sentence through the weighing of aggravating and

²⁸ Centre for Women's Justice *Women Who Kill: How the State criminalises women we might otherwise be burying* (February 2021) <https://www.centreforwomensjustice.org.uk/women-who-kill>

mitigating factors. The use of a weapon is already a statutory aggravating factor, so it is already being considered when imposing a sentence, and thus a specific starting point is unnecessary. Removing judicial discretion in this way prevents nuanced consideration of the role of a weapon in the offending, such as where an abused woman uses a kitchen knife to prevent her abusive partner from assaulting her.

26. More generally, as explored in the previous section, increasing sentences does not serve purposes of sentencing like deterrence and rehabilitation.

Q2.2: If a minimum term starting point were to apply to all murders committed with a knife or other weapon, what should the starting point be?

27. As above, we oppose a change to the starting point.

Q2.3: If a minimum term starting point were to apply to all murders committed with a knife or other weapon, should this be disapplied in cases where a victim of abuse has killed their abuser or not?

28. While we disagree with the imposition of a starting point for all murders committed with a knife or other weapon, should it be implemented, it must be disapplied in cases where a victim of abuse has killed their abuser. If applied correctly, this carve-out would benefit abused women defendants who resorted to the use of a weapon.
29. However, this proposition rests on the faulty assumption that courts will both recognise and acknowledge the abuse. The cases set out above, particularly *Magson* and *Martin*, demonstrate the ways in which courtroom and media narratives can demonise abused women defendants, and minimise, ignore and excuse the abuse they experience. At sentencing following a retrial in *Magson*, the judge held that she was the primary perpetrator of violence in her relationship, in the face of widespread evidence to the contrary. At APPEAL, we have many examples of cases where an abused woman is accused by a prosecutor and/or a judge of “giving as good as she got”, a comment demonstrating a gross misunderstanding of the reality of abuse.
30. If this carve-out is to protect an abused woman defendant, the court must believe her claims of abuse. This is all the harder if she has never reported the abuse to the authorities before the incident, which is common.²⁹

²⁹ It is estimated that in the UK, less than 24% of domestic abuse crimes are reported to police: <https://criminalinjurieshelpline.co.uk/blog/uncovering-the-unreported-numbers-in-domestic-abuse-cases/>

31. It relies too on the abused woman defendant disclosing the abuse in time for trial, which ignores the many barriers to doing so. The Centre for Women's Justice found late disclosure of abuse is common, with some women only disclosing after they have been convicted.³⁰ Some barriers to disclosure include cultural ones, as well as difficulties in disclosing abuse, particularly sexual abuse, to male lawyers,³¹ and women feeling intense guilt at what they had done and not wanting to speak negatively of the men they loved. The research found that this was compounded in some cases where women had been advised by their lawyers "not to speak ill of the dead."³² Furthermore, disclosing abuse in court can be a traumatic experience.
32. If we cannot rely on courts to accurately identify victims of abuse, the protection offered by the proposed carve-out is illusory.

Section 3: Equalities

Q3.1 and 3.2: Do you agree or disagree that we have correctly identified the range and extent of the equalities impacts under Section 1 and Section 2 of these proposals set out in this consultation? Please give reasons and supply evidence of further equalities impacts if you believe otherwise.

33. We do not consider there has been adequate consideration of the different experiences of men and women who are convicted of murder, including likelihood of using a weapon, nor the barriers to disclosing abuse faced by many women. The particular experiences and disadvantages faced by Black and minoritised women, as explored by the Centre for Women's Justice in collaboration with Imkaan,³³ have also not been sufficiently considered.

³⁰ Centre for Women's Justice *Women Who Kill: How the State criminalises women we might otherwise be burying* (February 2021) <https://www.centreforwomensjustice.org.uk/women-who-kill>

³¹ Fariessia Martin "felt uncomfortable with her all male defence team and was dealt a blow when the Court refused her application to transfer legal aid to a female solicitor she trusted." Sally Middleton "Fri Martin: 'A paradigm case of coercive control'" Justice for Women (4 December 2020) <https://www.justiceforwomen.org.uk/news/2020/12/4/fri-martin-a-paradigm-case-of-coercive-control>

³² Centre for Women's Justice *Women Who Kill: How the State criminalises women we might otherwise be burying* (February 2021) <https://www.centreforwomensjustice.org.uk/women-who-kill>

³³ Centre for Women's Justice *Life or Death? Preventing Domestic Homicides and Suicides of Black and Minoritised Women* (November 2023) <https://static1.squarespace.com/static/5aa98420f2e6b1ba0c874e42/t/655639ddc55be306e7dfa5c5/1700149727418/Life+or+Death+Report+-+Nov+2023.pdf>