



## Domestic Abuse Bill – legal protection for survivors who offend due to domestic abuse

*I have been astounded by the number of female offenders who are victims of domestic abuse and how that is a significant trigger to their offending.*

[Police inspector](#)<sup>1</sup>

### About the Centre for Women's Justice

Centre for Women's Justice (CWJ) is a legal charity working to hold the state to account on the response to violence against women and girls. We are a lawyer-led organisation focused on challenging failings and discrimination against women in the criminal justice system.

### Executive summary

CWJ is calling for a new statutory defence and an amendment to the law on self-defence to be added to the Domestic Abuse Bill<sup>2</sup> for those whose [offending is driven by their experience of domestic abuse](#).<sup>3</sup> This would address gaps in legal protection for survivors, strengthen recognition of the links between victimisation and offending and deter inappropriate prosecutions. Our proposals are supported by the Victims' Commissioner, the designate Domestic Abuse Commissioner and other legal experts and domestic abuse organisations.

### Why new legal protection is needed

The recent case of [Sally Challen](#) highlighted the devastating impact of coercive relationships and the lack of legal protection for survivors of domestic abuse who are driven to offend.<sup>4</sup> [Almost 60% of women](#) supervised in the community or in custody, who have an assessment, have experienced domestic abuse;<sup>5</sup> the [true figure is likely to be much higher](#).<sup>6</sup> [Most women in prison are there for non-violent offences](#).<sup>7</sup> [Women in prison are more than twice as likely as men](#) to say they have committed offences to support someone else's drug use as well as their own.<sup>8</sup> [Research by the Disabilities Trust](#) with 173 women at HMP Drake Hall found 64% had a history indicative of brain injury and for most this was caused by domestic violence.<sup>9</sup> [Women with learning disabilities](#) are particularly vulnerable.<sup>10</sup>

Women can become trapped in a vicious cycle of victimisation and criminal activity. [Their situation is often worsened](#) by poverty, substance dependency or poor mental health.<sup>11</sup> Imprisonment compounds this and is severely detrimental for [dependent children](#).<sup>12</sup>

*He'd make me do things just so that I could get drugs...*

[Domestic abuse survivor](#)<sup>13</sup>

In 2017 the then Home Office Minister for Crime, Safeguarding and Vulnerability [said](#) that there needed to be 'a *root and branch review of how women are treated in the criminal justice system when they themselves are victims of abuse*'.<sup>14</sup> Yet the criminal law still fails to protect those whose experience of abuse drives them to offend.

### Survivors' statutory defence

We propose a new statutory defence for survivors whose offending is driven by their experience of domestic abuse, adapted from the defence in [Section 45](#) of the Modern

Slavery Act 2015 for victims of human trafficking or modern slavery who are coerced into offending. This requires proactive, early case management and allows all agencies to become more adept at recognising and responding to circumstances which indicate there is no public interest in prosecuting a case, or where the statutory defence is likely to apply. The proposed new defence would be available to both men and women and would need to be supported by a CPS policy and judicial directions.

### **Better protection for survivors acting in self-defence**

We propose an amendment to the law on self-defence modelled on the provisions for householders in Section 76 of the Criminal Justice and Immigration Act 2008. This would allow survivors acting in self-defence against their abuser the same protection that is currently available to householders who act in self-defence against an intruder in the home.

### **How domestic abuse drives offending by survivors**

The [government recognises](#) the 'major part that domestic abuse can play in female offending'.<sup>15</sup> [Offending can result from the victim's attempts to survive and the criminal justice process itself can be used by abusers against victims.](#)<sup>16</sup> As [Women's Aid](#) puts it:<sup>17</sup>

*Coercive control creates invisible chains and a sense of fear that pervades all elements of a victim's life... Experts like Evan Stark liken coercive control to being taken hostage. As he says: "the victim becomes captive in an unreal world created by the abuser, entrapped in a world of confusion, contradiction and fear".*

Women are frequently convicted of offences they committed as a direct result of their experience of domestic abuse, such as:<sup>18</sup>

- Handling stolen goods under threat of violence by a partner
- Possession of a controlled substance belonging to an abusive partner
- Carrying a knife on behalf of an abusive partner
- Theft offences to pay for drugs and alcohol used by them and an abusive partner
- Assault against an abusive partner or ex-partner
- Failure to ensure a child's attendance at school for fear of an abusive ex-partner
- Bringing drugs into prison for an abusive partner.

### **Gaps in the current law**

The introduction of the offence of controlling or coercive behaviour in [Section 76 of the Serious Crime Act 2015](#) recognised the consequences of domestic abuse as a pattern of behaviour over time. Yet the criminal law still does not provide an effective defence for those who commit offences as a result of abuse. [The common law defence of duress](#) is ill suited for cases where a defendant is experiencing domestic abuse because:<sup>19</sup>

- It does not reflect the complexities of domestic abuse and does not recognise psychological, sexual or financial abuse.
- For the defence of duress to succeed, the threat of physical harm must be imminent. This fails to recognise the '*typically entrenched, unpredictable and random*' nature of domestic abuse.<sup>20</sup>
- The defendant must establish 'relevant characteristics' including 'battered woman syndrome' and 'learned helplessness' - outdated concepts which pathologise women rather than offering an effective defence for the actual circumstances. They require the production of medical evidence which is not practicable in many cases.

The common law defence of self-defence is very difficult to establish in cases of use of force by a survivor of domestic abuse against their abusive partner or former partner, where a jury may well conclude that the response was disproportionate without taking account of the long history of abuse. Our proposed amendment to section 76 of the Criminal Justice and

Immigration Act 2008 would make it easier for those who acted in response to domestic abuse to establish they were acting in self-defence, providing them with equivalent protection to those acting in response to an intruder in their home.

Of 31 criminal defence lawyers responding to a recent survey, more than two-thirds believed that our self-defence proposal would provide a more effective defence in this context than the current law, while three-quarters considered that our Section 45 proposal would be more effective than the law of duress, where offending results from domestic abuse.<sup>21</sup>

The government is not yet persuaded to adopt our proposals but intends to 'monitor the use of the existing defences and keep under review the need for any statutory change'.<sup>22</sup> However in the meantime, victims/survivors continue to be criminalised and opportunities missed to tackle the violent and coercive behaviour to which many have been subjected, at significant human cost to women and their children. Action is needed now.

**For more information and a full list of the legal and domestic abuse experts supporting these proposals, contact us:**

[www.centreforwomensjustice.org.uk](http://www.centreforwomensjustice.org.uk) | [k.swilliams@centreforwomensjustice.org.uk](mailto:k.swilliams@centreforwomensjustice.org.uk)

---

<sup>1</sup> [Prison Reform Trust \(2017\) Fair cop? Improving outcomes for women at the point of arrest](#)

<sup>2</sup> These proposals were developed by the Prison Reform Trust (PRT) in collaboration with CWJ and others, as part of PRT's Transforming Lives programme to reduce women's imprisonment. Since that programme ended in November 2020, CWJ have taken over the lead on this work by agreement with PRT.

<sup>3</sup> See: [Prison Reform Trust \(2019\) Prison Reform Trust Briefing on the Draft Domestic Abuse Bill: Pre-legislative scrutiny – April 2019](#); see also: [Prison Reform Trust \(2017\) There's a reason we're in trouble: Domestic abuse as a driver to women's offending](#) and the accompanying [briefing by the Criminal Bar Association](#).

<sup>4</sup> ['My mother, Sally Challen, was branded a cold-blooded killer. At last she has justice', The Guardian, Saturday 8 June 2019](#)

<sup>5</sup> [Ministry of Justice \(2018\) Female Offender Strategy](#)

<sup>6</sup> [Gelsthorpe, L., Sharpe, G., and Roberts, J. \(2007\) Provision for Women offenders in the community](#)

<sup>7</sup> [Table 2.9i, Ministry of Justice \(2019\) Offender management statistics quarterly: October to December 2018](#)

<sup>8</sup> [Light, M., Grant, E. and Hopkins, K. \(2013\) Gender differences in substance misuse and mental health amongst prisoners](#)

<sup>9</sup> [The Disabilities Trust \(2019\) Making the link: Female offending and brain injury](#)

<sup>10</sup> [PRT \(2019\) Out of the Shadows: Women with learning disabilities in contact with or on the edges of the criminal justice system](#)

<sup>11</sup> [PRT \(2019\) Why focus on reducing women's imprisonment? England and Wales fact sheet – April 2019](#)

<sup>12</sup> See: [Beresford, S. \(2018\) What About Me? The impact on children when mothers are involved in the criminal justice system](#); and [Ministry of Justice \(2019\) The importance of strengthening female offenders' family and other relationships to prevent reoffending and reduce intergenerational crime](#)

<sup>13</sup> [Prison Reform Trust \(2017\) There's a reason we're in trouble: Domestic abuse as a driver to women's offending](#)

<sup>14</sup> [Prison Reform Trust \(2017\) There's a reason we're in trouble: Domestic abuse as a driver to women's offending](#)

<sup>15</sup> See: [HM Government \(2019\) Transforming the response to domestic abuse: Consultation response and draft Bill](#) and [Ministry of Justice \(2018\) Female Offender Strategy](#)

<sup>16</sup> [Roberts, J. \(2015\) 'It was do or die' – How a woman's experience of domestic abuse can influence her involvement in crime: A qualitative investigation of the experiences of community-based female offenders. Unpublished doctoral research findings summary report, University of Leicester](#)

<sup>17</sup> Women's Aid website, viewed 03/04/19: <https://www.womensaid.org.uk/information-support/what-is-domestic-abuse/coercive-control/>

<sup>18</sup> See: [Prison Reform Trust \(2017\) There's a reason we're in trouble: Domestic abuse as a driver to women's offending](#) and [Criminal Bar Association of England and Wales \(2017\) Defences available for women defendants who are victims/survivors of domestic abuse](#)

<sup>19</sup> See: [Criminal Bar Association of England and Wales \(2017\) Defences available for women defendants who are victims/survivors of domestic abuse](#) and Loveless, J. (2010) 'Domestic Violence, Coercion and Duress', *Criminal Law Review*, pages 93-108

<sup>20</sup> Loveless, J. (2010) 'Domestic Violence, Coercion and Duress', *Criminal Law Review*, pages 93-108

<sup>21</sup> PRT conducted a short survey of criminal defence lawyers in Summer 2020 to seek their views on the adequacy of defences available to individuals who offend due to their experience of domestic abuse, including coercion. Further details are available from CWJ on request.

<sup>22</sup> Letter from Alex Chalk MP, Parliamentary Under-Secretary of State for Justice, to Katy Swaine Williams dated 7 December 2020