



Briefing for criminal defence lawyers and prison lawyers

STOP CRIMINALISING SURVIVORS

Preventing the unjust criminalisation of victims/survivors of domestic abuse and other forms of violence against women and girls (VAWG)

“The traditional approach is to ask a client to tell their story, and then you build a defence based on that story. In these types of cases, and certainly with X, I had to dig deeper... I spent a lot of time with X, building that relationship, talking to her, encouraging her to tell me what really happened.”

Criminal defence lawyer¹

ABOUT CENTRE FOR WOMEN'S JUSTICE

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 work closely with frontline women's sector organisations on using legal tools to challenge police and prosecution failings around violence against women and girls

In 2024, CWJ will be launching a training programme devised and delivered by legal experts with input from survivors, for criminal defence lawyers and prison lawyers representing victims of domestic abuse who are accused of offending.

In this briefing we highlight some basic elements of effective representation in these cases.

For more information and to register your interest in the training programme, contact us:

info@centreforwomensjustice.org.uk

www.centreforwomensjustice.org.uk/stop-criminalising





THE LINKS BETWEEN DOMESTIC ABUSE AND WOMEN'S ALLEGED OFFENDING

Fifty-seven per cent of women in prison or under community supervision report that they are victims of domestic abuse. The true figure is likely to be higher because of barriers to women disclosing abuse. Of 173 women screened at HMP Drake Hall, 64% reported a history indicative of brain injury and for most this was caused by domestic violence.

[Research](#) by CWJ and others shows that, for many of these women, their alleged offending results directly from their experience of abuse. Yet gaps in law and practice mean this is often not properly taken into account. Intersectional discrimination and inequality experienced by [Black, Asian, minoritised and migrant women](#) can increase the risk of unjust criminalisation.

“Women from ‘ethnic minorities’ don’t speak up because they don’t think they can get help... They don’t have faith in the system.”

Probation practitioner

THE ROLE OF CRIMINAL DEFENCE LAWYERS AND PRISON LAWYERS

CWJ's research highlights the critical role played by criminal defence lawyers and prison lawyers in ensuring that decisions in criminal proceedings against victims of domestic abuse take proper account of their experience of abuse and its relevance to their alleged offence.²

If you are representing a woman accused or convicted of an offence, she is likely to be a victim of domestic abuse or other gender-based violence and this may be directly relevant to her alleged offending. This, in turn, is likely to be relevant to the decision to arrest and prosecute her, the conduct of court proceedings, conviction or acquittal, and sentencing.

One of the most important factors for obtaining justice is the defence lawyer's understanding of domestic abuse, their ability to communicate the relevance of this effectively to the court, and their relationship with their client. This is also important for women going through proceedings post-sentence, in relation to appeal, parole or recall.

YOUR ROLE IN REPRESENTING A VICTIM OF DOMESTIC ABUSE ACCUSED/CONVICTED OF OFFENDING

Understanding the dynamics of domestic abuse will be relevant to every aspect of your client's case, including:

- Identifying your client as a victim or potential victim
- Understanding the potential relevance of domestic abuse to your client's case
- Taking your client's instructions and understanding their case
- Advising and representing your client at the police station
- Challenging decision to prosecute
- Advising on plea
- Preparing your client for trial
- Preparing your client for sentencing
- Representing your client on appeal
- Representing your client in relation to parole/recall.

Your role will be key to achieving a just outcome, through:

- Facilitating your client's disclosure of abuse
- Presenting evidence of abuse to police, prosecutors and the court
- Educating the police, prosecutors and court as to the impact of domestic abuse/coercive control
- Challenging myths and stereotypes and addressing arguments about credibility (e.g. where there is no third-party evidence of abuse, or where your client's account has changed)
- Adducing expert evidence.

"Yeah, I was asked about it [the abuse]. But I was told only to answer questions that I was asked. Not to go into anything when I could have really given more. So I wasn't really asked that much...they didn't know about how, like four/five days out of seven he was getting drunk, I was getting attacked with knives and thrown down the stairs."

Woman with lived experience³



WHAT ARE DOMESTIC ABUSE AND COERCIVE CONTROL?

Sections 1-3 of the Domestic Abuse Act 2021 create a statutory definition of domestic abuse.⁴ Domestic abuse is described by Women's Aid as 'an incident or pattern of incidents of controlling, coercive, threatening, degrading and violent behaviour, including sexual violence'.⁵ Domestic abuse must involve individuals who are 'personally connected' (defined in section 2 of the Act). This usually means the abuse is perpetrated by a partner or ex-partner, but the perpetrator may also be a family member or carer. In the vast majority of cases, it is experienced by women and perpetrated by men. Domestic abuse can include harassment or stalking, and online or digital abuse.

Domestic abuse often includes elements of controlling or coercive behaviour, which was made a criminal offence within intimate or family relationships by the Serious Crime Act 2015. Coercive control may be described as a pattern of intimidation, degradation, isolation and control with the use or threat of physical or sexual violence. Women's Aid explains:⁶

“Coercive control creates invisible chains and a sense of fear that pervades all elements of a victim’s life. It works to limit their human rights by depriving them of their liberty and reducing their ability for action. 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”.”

HOW DOES DOMESTIC ABUSE LEAD TO ALLEGED OFFENDING?

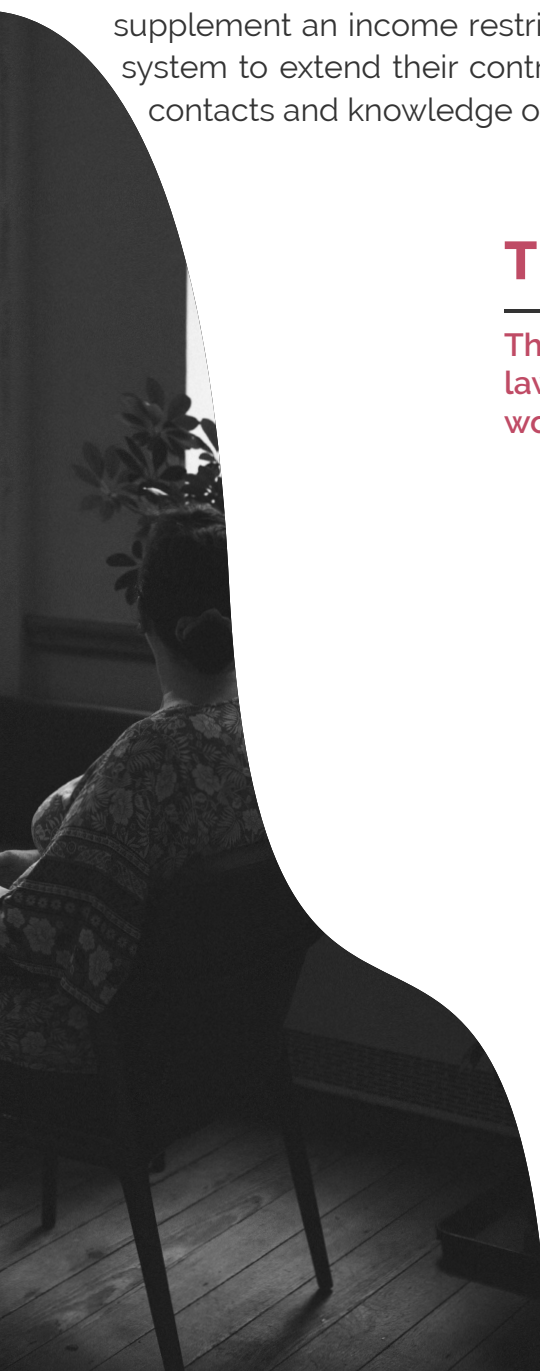
Successive research reports have demonstrated how women's offending or alleged offending is commonly linked to their experience of domestic abuse and other forms of gender-based violence, and how they are unjustly criminalised as a result.⁷ The case of Sally Challen, who killed her abusive husband and successfully appealed against her murder conviction, highlighted the devastating impact of coercive relationships and the lack of legal protection for victims of domestic abuse who are driven to offend. Similar issues arise in cases involving less serious offences.⁸ Offending may result from a victim's attempts to survive, and the criminal justice process itself can be used as a weapon of abuse.⁹

For some women, involvement in offending (or alleged offending) arises from their attempts to defend themselves by using force against their abuser, leading them to face charges for assault offences. Some women are coerced by their abuser into committing offences such as benefit or mortgage fraud, theft, handling stolen goods, bringing drugs into prison, and hiding weapons or drugs. Others are driven to offend due to duress of circumstance, shoplifting to supplement an income restricted by their abuser.¹⁰ Abusers manipulate the criminal justice system to extend their control over their victim, including police officers who can use their contacts and knowledge of the system.

TRAUMA-INFORMED INTERVIEWING

The Youth Justice Legal Service's toolkit on trauma-informed lawyering provides a helpful check list which is aimed at lawyers working with children but is also useful here:¹¹

- Allow the client to be heard and ensure their understanding of the issue at hand by asking them to explain back what you have told them.
- Respect your client's choices about how much information they share with you. Explain to the client why you are seeking information, and how it will help with your representation.
- Anticipate issues that may be distressing for your client. Ask for your client's consent to engage additional support. Be aware that the process of giving instructions or giving evidence can itself be very difficult for the client.
- Building connections takes time. Remain patient, present and available to the client.
- Where possible, adjust your environment to promote safety.



PRESENTING EVIDENCE OF THE CONTEXT OF ABUSE SURROUNDING THE ALLEGED OFFENCE TO ALLEGED OFFENDING

Building trusting relationships and taking time to gather a detailed history and then carefully prepare its presentation will be crucial to help the court understand the complex and cumulative nature of abuse and its impact on your client. The context of abuse may be relevant to the evidential test and public interest test in prosecution decisions, as well as decisions on guilt or innocence, and on sentencing. You may need to adduce medical expert evidence about your client's state of mind at the time of the offence, and/or non-medical expert evidence about the dynamics of domestic abuse and/or the particular cultural context if your client is a Black, Asian, minoritised or migrant woman.

SPECIAL MEASURES AND JURY DIRECTIONS

You may need to apply for special measures to allow your client to give her best evidence about the context of abuse surrounding the alleged offence. Part of your role is to challenge common misconceptions about behaviour that can be properly explained by the impact of trauma, such as 'coldness' or an apparent lack of remorse, memory issues and substance use.

"During the trial I didn't want to talk about when the relationship was bad. His family were all there... In the forefront of my mind I knew I'd murdered him and that was enough. I didn't want to be embarrassed saying what he'd done to me..."

Woman with lived experience¹²

It is also important to request a direction from the trial judge to the jury that they should not be influenced by myths and stereotypes in relation to domestic abuse. The June 2022 edition of the Crown Court Compendium sets out that directions to a jury on the dangers of assumptions can be given in cases where a jury may need assistance as to how someone may be conditioned by the experience of long term domestic abuse. This may help the jury to avoid myths and stereotypes about how victims/survivors 'should' behave, and misinterpretations of behaviour that can be explained by the impact of trauma.

PAROLE

One of the challenges with parole can be the conflicting relationship between being classed as a perpetrator and being a victim of abuse. This requires a nuanced approach by the woman's representative and the panel. If you have not yet met the client and you need to build trust it is worth considering whether a face-to-face visit is justified or by video link if distance is an issue. It can be a challenge for women to access offending behaviour work that takes account of their own needs. During a parole hearing, consider the potential benefits of opening the questioning of your client and/or any witnesses instructed on her behalf. The panel's questions should be fair, inquisitorial and related to risk, and you can interject.

"What are the fundamental things I think that disadvantage women... the risk assessments... they have obviously been designed originally with men in mind... I've been before parole boards and they've often said things like, "This is my first case with a woman.""

Prison Lawyer¹³

ENDNOTES

- 1 [Centre for Women's Justice \(2021\) Women who kill: how the state criminalises women we might otherwise be burying, p.35](#)
- 2 [Ibid, pp.28 et seq](#)
- 3 [Ibid, p.37](#)
- 4 [See: Domestic Abuse Act 2021 and Home Office \(2022\) Domestic Abuse Statutory Guidance, paras. 9 et seq](#)
- 5 [Women's Aid website, accessed 30/11/23: www.womensaid.org.uk/information-support/what-is-domestic-abuse/](#)
- 6 [Women's Aid website, viewed 30/11/23: https://www.womensaid.org.uk/information-support/what-is-domestic-abuse/coercive-control/](#)
- 7 [For further resources go to: www.centreforwomensjustice.org.uk/stop-criminalising](#)
- 8 [Challen, D. \(2019\) 'My mother, Sally Challen, was branded a cold-blooded killer. At last, she has justice', The Guardian, available at http://bit.ly/SallyChallen](#)
- 9 [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](#)
- 10 [See: Centre for Women's Justice \(2022\) Double Standard: ending the unjust criminalisation of victims of violence against women and girls; Centre for Women's Justice \(2022\) No Safe Space: lessons for national policy and local practice from the West Midlands multi-agency response to women involved in offending or alleged offending who are victims of domestic abuse; Prison Reform Trust \(2017\) There's a reason we're in trouble: Domestic abuse as a driver to women's offending](#)
- 11 [Youth Justice Legal Centre - Toolkit 5: Trauma Informed Lawyering. See also: Inns of Court College of Advocacy \(ICCA\) training on Advocacy and the Vulnerable \(Crime\); The Advocates' Gateway: practical, evidence-based guidance on communicating with vulnerable witnesses and defendants; Howard League for Penal Reform Guide for Anti-racist Lawyers; and Prisoners' Advice service website and resources.](#)
- 12 [Centre for Women's Justice \(2021\) Women who kill: how the state criminalises women we might otherwise be burying, p.36](#)
- 13 [Ibid, p.52-54](#)