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# Women who kill: why self-defence rarely works for women who kill their abuser

Sophie Kate Howes  
Katy Swaine Williams  
Harriet Wistrich

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***\*Crim. L.R. 945** This article shares findings from a recent research study by the Centre for Women's Justice and Justice for Women, that explores the criminal justice response to women who kill abusive men. The article focuses on why women who kill men who have been abusive to them are rarely acquitted on the basis of self-defence. It sets out some of the key challenges women and their lawyers face when arguing self-defence, some of which can be overcome by improving practice, and some of*

which require broader structural change and law reform. In addition to drawing on the research findings, this article considers two recent cases that have progressed through the courts since the research was published.

"This case would probably have never come to trial had [she] shot and killed a stranger who threatened, beat, and raped her; took her money; cut her off from her family; and then forced her to subordinate herself in every way imaginable under threat of death....there was nothing in the court's experience that helped it understand how a husband could so constrain his wife's life and liberty to cause the 'slow death' (she) described." <sup>1</sup>

Introduction

In February 2021, the Centre for Women's Justice<sup>2</sup> and Justice for Women<sup>3</sup> published a research report: "Women Who Kill: how the state criminalises women \*Crim. L.R. 946 we might otherwise be burying".<sup>4</sup> The report is the culmination of a four-year research study exploring the criminal justice response to women who kill abusive men. Through interviews with lawyers and other practitioners in the criminal justice system, and crucially with women themselves, the research considers the extent to which the law itself, and the way in which the law is applied, prevent women accessing justice.

One key finding from the research study is that women who kill abusive men are rarely acquitted on the grounds of self-defence. This article explores why this is so, drawing on the research findings, as well as examining two recent cases that have progressed through the courts in England and Wales since the publication of the research.

We begin with a factual summary of these two cases. We then outline the law on self-defence and consider the legal tests that make women's use of self-defence in these cases difficult. Next, we focus on two stages in the criminal justice process —gathering evidence and the trial—and outline some of the challenges involved for women and their lawyers. The article concludes by considering the changes needed in law and practice to ensure women can access justice in these cases.

This article shares selected findings from our research study. Readers are encouraged to read the research report in full. The research examines the various stages of a woman's journey through the criminal justice system, from criminal justice responses to her as a victim of violence, to post-conviction.

Case summaries
The following cases concluded after the research was completed.
<u>Farieissia Martin</u>
Farieissia Martin was convicted of murdering her abusive partner in 2015. She was aged 22 at the time and the mother of their two small children. In 2020, the Court of Appeal quashed Martin's conviction on the basis of new psychiatric evidence of post-traumatic stress disorder (PTSD) caused by domestic and sexual violence, and a retrial was ordered. Her lawyers wrote to the Crown Prosecution Service (CPS) indicating that she would be willing to plead guilty to manslaughter despite evidence supporting self-defence which, if successful, would lead to her acquittal. The CPS refused to accept a plea to manslaughter and so the case was prepared for retrial. As the trial was beginning, new evidence supporting her account (that she was strangled shortly before the offence took place) came to light and the CPS agreed to accept Martin's guilty plea to manslaughter. She was sentenced to 10 years' imprisonment for the manslaughter plea on 21 May 2021 and is now back in prison serving the remainder of her sentence.
<u>Emma-Jayne Magson</u>
Emma-Jayne Magson was convicted of murdering her violent partner in 2016. In 2020, her conviction was quashed by the Court of Appeal on the grounds that there was fresh evidence to support the defence of diminished responsibility, and a retrial was ordered. In March 2021, Magson was again convicted of murder, by a majority jury verdict, following an eight-week retrial, despite evidence of previous recent acts of domestic violence, and a pathologist's report supporting her account of having been strangled. Magson was again subject to the mandatory life sentence with the same minimum term of 17 years. *Crim. L.R. 947

### Women who kill: convictions and acquittals

Women kill rarely, and in different circumstances to men. In the context of intimate partner violence, the number of women who kill their male partners is low, and is in stark contrast to the number of women who are killed by men who have a history of abusing them.<sup>5</sup> Our research found that when a woman kills her intimate partner, the killing often follows the culmination of increasing coercive control that leads her, ultimately, to kill the perpetrator, rather than risk being killed by him.<sup>6</sup>

Despite this evidence of abuse, one of the key findings from our research is that women who kill abusive men in England and Wales are rarely acquitted on the grounds of self-defence. Of the 92 cases included in the study, 43 per cent (n=40) were convicted of murder, 46 per cent were convicted of manslaughter (n=42) and just 7 per cent of women were acquitted (n=6)<sup>7</sup>. Fourteen women had tried to run self-defence as part of their defence. However, they were not successful and were convicted of either manslaughter or murder.<sup>8</sup>

Our research found multiple examples of cases where the CPS pursued a murder conviction despite clear evidence of a context of domestic abuse indicating that either non-prosecution (where there is evidence that she was acting in self-defence) or prosecution for manslaughter would be more appropriate. This has led to women being convicted and serving long sentences that do not appear to be in the public interest, particularly where they are the primary carers of children.

### Self-defence: the legal framework

As Sheehy et al argue, self-defence is the preferred defence for women who kill abusive partners.

"It is a complete defence; it conveys that the woman's act was justified; and its elements permit the jury to hear evidence about the experience of battering and the social realities that provide context to the woman's acts."<sup>9</sup>

In England and Wales, self-defence and accident are the main complete "defences" to murder. In the case of self-defence, the use of force must be necessary, reasonable and proportionate to the threat faced.<sup>10</sup> These questions are decided by reference to the circumstances as the defendant believed them to be.<sup>11</sup> The apparent reasonableness or otherwise of such a belief will also be relevant to the question *\*Crim. L.R. 948* of whether the defendant genuinely held it. The degree of force is *not* to be regarded as reasonable where it was disproportionate in the circumstances as the defendant believed them to be.

Feminist legal research—and this study—question the extent to which the concept of "reasonableness", and the way in which it is considered in court, allows for women's experience of abuse to be properly taken into account in these cases, or whether in fact the law and the way it is applied leads to the exclusion of women's experiences, or a failure to understand them in relation to the alleged offence.<sup>12</sup>

Accurately interpreting reasonableness relies heavily on the insight of judges and juries into the defendant's beliefs at the time of the killing. In domestic abuse cases, this requires both an understanding of domestic abuse, including coercive control, and a full picture of the factual context faced by the defendant at the time of the killing and her relevant past experiences. It must also be relevant for judges and juries to take account of the wider context in which killings take place—namely what is in large part arguably a failure of the criminal justice system to protect women or address men's violence towards them,<sup>13</sup> despite a recent high-level public policy focus on tackling domestic abuse and some legislative reform.<sup>14</sup> The absence of such understanding, and the frequent use of a weapon in these cases which, at face value, may suggest disproportionality, may help to explain why self-defence is so rarely successful in this context. Both of these factors are discussed further below.

Our research includes a recommendation to address some of these barriers by amending the law on self-defence. [Subsection 76\(5A\) of the Criminal Justice and Immigration Act 2008](#) already provides an exception for householders using force against someone they believe to be a trespasser. In householder cases, the force used may still pass the reasonableness test if it is disproportionate, but not grossly disproportionate, in the circumstances as the defendant believed them to be. This has

been found by the Court of Appeal to provide "no more than a refinement" of the law, meaning that "force is not by law automatically unreasonable in householder cases simply because it is disproportionate, provided it is not grossly disproportionate".<sup>15</sup> Despite the Court of Appeal's earlier reasoning in *Keane*<sup>16</sup> that reasonableness and proportionality "mean the same thing", the judgment in *Ray* makes clear that in householder cases it is possible for a disproportionate act to be found reasonable. However marginal the benefits of the defence may be, research would be useful to establish whether the existence of the defence operates to influence prosecution decisions. The Centre for Women's Justice has proposed, with some support in Parliament but currently opposed by government, that the householder defence should be replicated for domestic abuse survivors using force against their abuser.<sup>17</sup> Whilst it has been argued that the variation of the proportionality test in the householder defence has made a negligible difference to self-defence, CWJ believes that the extension of this defence to women who defend themselves against abusive partners would be of normative significance, as the current householder offence applies in practice mostly to men and is arguably discriminatory. Under this proposal, evidence of the nature and extent of the alleged domestic abuse would inform the court's consideration of reasonableness, including proportionality. An alternative proposal discussed by Wake in 2013 is a partial defence of self-defence for use in this context; Wake also points to reforms in other jurisdictions.<sup>18</sup>

### Barriers to women's use of self-defence

When considering whether a woman's actions in purported self-defence were necessary, reasonable and proportionate, a key issue is whether she was under attack at the time of the killing.

Whilst pre-emptive self-defence is in theory permissible in some circumstances, and there are comparative examples of women being acquitted in "non-traditional" self-defence cases.<sup>19</sup> our research was unable to identify any examples from domestic case law where a woman has been acquitted on the grounds of self-defence when she was not being attacked at the time. In such cases, the less attractive option of pleading the partial defence loss of control may be available, offering the chance of a conviction for manslaughter rather than murder, but no possibility of acquittal. For the purposes of this article, we focus on "traditional" self-defence cases, although we recognise that a more expansive understanding of self-defence is required to more accurately reflect women's experiences of imminent harm in abusive relationships, and further research in this area would be valuable. *\*Crim. L.R. 950*

We set out below the challenges that exist both in relation to gathering evidence and concerning the presentation and interpretation of that evidence at trial and outline some solutions.

### Gathering evidence

In order to argue self-defence successfully, it is essential to ground or contextualise a woman's actions in her past experience of abuse if there is to be any prospect of a jury appreciating that her actions were both necessary and proportionate based on her beliefs at the time. It is therefore the task of her defence team to build a strong evidential base that demonstrates her experience of abuse.

However, there are a number of challenges involved in doing this. Notably, issues relating to disclosure, women providing false or inconsistent accounts of what has happened, violence "on both sides", the use of weapons, and the existence of harmful myths and stereotypes. Collectively, these common features serve to undermine women's accounts of abuse, creating a barrier to the use of self-defence.

### Disclosure

The first hurdle identified in our research is that women may never have previously disclosed their experience of abuse to anyone. Third-party evidence of abuse, particularly from agencies such as the police, health services, or social services, is extremely valuable in verifying a woman's account and makes it less likely to be contested. However, there may be little or no such evidence available for women who, like many victims of domestic abuse, have not reported it. This is particularly true in cases of coercive control.<sup>20</sup> Nearly all of the 20 women interviewed as part of the research had experienced coercive control, yet fewer than half had reported their experiences of abuse to the police. Of those women who had reported it, police responses had been poor, leading to under-reporting when they experienced further violence.

This was a factor for Farieissia Martin, who did not report the abuse she experienced to the police for a number of reasons. She had young children and was fearful that calling the police would lead to social services removing her children. She is also from a Black working-class community in Liverpool where there is a general mistrust in the police and reporting can be seen as "grassing".<sup>21</sup> As a result, whilst there was some limited evidence from family and friends to support her account of the abuse, the absence of any official reports may have led to a minimising of its impact on Martin.

The difficulties women experience disclosing abuse do not stop once women have killed their abusers. In order to rely on self-defence, early and full disclosure is critical. If women are unable to disclose the full extent of the abuse they have experienced to their lawyer, then either self-defence will not be advanced at all, or it is likely to fail because of an inadequate explanation for the degree of force used. This was a common experience amongst the women we interviewed. *\*Crim. L.R. 951*

"I was too scared to tell them (lawyers) the truth even though I wanted to tell them the truth. I was too scared for anyone to know the truth... I didn't speak to my solicitors properly until I came to prison, about maybe six months after I came into custody. I didn't speak to them about anything."<sup>22</sup>

Whilst there are many societal factors contributing to why women feel unable to disclose abuse, our research found that there are tangible things that lawyers can do to enable disclosure. Taking the time to build a trusting relationship was key.

"The process of disclosure of abuse, particularly sexual violation, requires trust and can take a long time, particularly where the woman concerned has not talked to anyone about the abuse previously ... obtaining a full account in six months or less will often require a significant commitment from the lawyer, particularly in circumstances now when legal aid pays by the case rather than the hour."<sup>23</sup>

However, as this lawyer highlighted, practical issues such as legal aid rules, which limit the paid time that can be spent with a client, make this difficult for even the most committed lawyers.

### ***False accounts***

Another related challenge identified by the research, is that women may fabricate an explanation for the killing—for example, that it was an accident. Our research found numerous examples of cases where women had lied to first responders, including police and ambulance services, and duty lawyers, before disclosing abuse at a later stage.

In Martin's case, she initially told police that her partner had been stabbed by intruders. This account later unraveled, and she disclosed that the deceased had attacked her that evening and she had stabbed him in self-defence. During her original trial, the fact that she had lied about what had happened was used against her by prosecutors, and this appeared to resonate with the jury. In Magson's case, the fact that she had lied to 999 call handlers, paramedics, the police and bystanders appeared to be a significant factor in her reconviction for murder.

Providing an untruthful account in the first instance does not constitute any of the elements of the offence of murder but, as lawyers highlighted to us, call into question the defendant's credibility. If a jury does not find the defendant credible, her account of abuse—particularly if there is little corroborating evidence—is immediately put in doubt, making it difficult for her to rely on self-defence.

### ***Violence "on both sides"***

A key factor in the successful use of self-defence is being able to demonstrate that the defendant's use of force was reasonable in the circumstances as she genuinely believed them to be. Where a defendant has used lethal force, this may require the defendant to provide evidence that she was genuinely in fear of her life or of serious harm. One challenge here is the frequent use of the stereotype of "she gave as good \**Crim. L.R. 952* as she got". When a woman has perpetrated lethal violence there will be a focus on any violent behaviour she has exhibited in the past. However, our findings reflect existing research indicating that women's previous violent behaviour appears to be given greater emphasis than the past violence of their male partner.<sup>24</sup> This is made worse by the failure of criminal justice agencies to respond effectively to the common scenario in which male perpetrators of domestic abuse make counter-allegations against their female victims,<sup>25</sup> leading to records of women's allegedly abusive behaviour which do not reflect the true dynamics of the relationship.

In Magson's case, the CPS and the police went to great lengths to present evidence of her allegedly violent behaviour in the past, apparently in order to deflect attention from the unarguably violent behaviour of the deceased on the night of the killing. During the retrial the CPS called witnesses to this end, including a former boyfriend who claimed Emma had hit him over the head with a vacuum cleaner. In contrast, there was CCTV footage of the deceased assaulting Magson on the night of the incident, credible witnesses stating that he was kicking and shouting at her front door, and medical evidence to support her account that Magson had been strangled at the time of the killing. Nonetheless, the jury rejected self-defence and found her guilty of murder.

This highlights one of the dilemmas faced by a defendant who wants to illustrate the level of violence and threat they faced from the deceased, namely that if they put forward evidence of the bad character of the deceased, this provides a gateway for the prosecution to seek to adduce bad character of the defendant.<sup>26</sup> In that event, there is no judicial or prosecutors' guidance specifically to protect defendants against the promulgation of myths and stereotypes about defendants who are victims of abuse, as discussed below. The only possible recourse for the defence in such a situation would be to ask the judge to exclude evidence of the defendant's purported bad character on the basis of prejudice, in that to admit it would adversely affect the fairness of the trial. The judge's response would depend in part on the extent of his or her understanding of the matters which this article seeks to address.

### *Use of a weapon*

Unless there is a good understanding of the dynamics of violence against women, the use of a weapon is likely to be interpreted as disproportionate by a jury, even in circumstances where a woman has just been subject to an attack where she feared for her life, as was the situation in both Martin and Magson's cases.

In 80 per cent of the cases included in the research, women had used a weapon; the vast majority (71 per cent) had stabbed their abuser. This is unsurprising given *\*Crim. L.R. 953* that women are usually physically smaller than their male partners, and aware of their abusive partner's capacity to be violent. However, the use of a weapon in self-defence cases is notoriously difficult, as one lawyer highlighted:

"The problem with self-defence is that it's a risky defence... you can try, but you wouldn't want to try it on its own, you would run it in tandem with something else... the presence of a weapon against an unarmed person, people don't like the presence of a weapon in self-defence cases."<sup>27</sup>

In Farieissia Martin's retrial, the judge gave a lengthy sentence for unlawful act manslaughter because she had used a knife after her abuser had strangled her, with the knowledge that there was a real risk that she would cause really serious harm in doing so.

### *Myths and stereotypes*

Depending on the beliefs and assumptions held by jurors, successfully using self-defence may well require the dispelling of the common myth that if a woman was in a violent relationship, then she should have left, or sought safety in some other way.

Sheehy et al considered a case where a woman was acquitted of killing her abusive husband in a "non-traditional" self-defence scenario (i.e. she was not being attacked by him at the time). The authors noted how the defendant's lawyers successfully put across her experience of coercive control and entrapment.<sup>28</sup> This included the defendant's belief that the police were unable to protect her, her abuser's threats to kill one of their children and his threats to harm her parents and her sister's family, which led her to reasonably conclude that she could not otherwise protect herself and her children.

Our research found that one challenge to explaining this kind of experience of coercive control and entrapment successfully, is the existence of harmful myths and stereotypes regarding violence against women, and women's behaviour more generally. Lawyers described how, in order to be recognised as victims, women need to play a role. If women do not fit the stereotype of how an abused woman should present, this can be problematic.

"Well, X was mouthy. The problem is, again, people still haven't got to the stage when we can dispense with those old stereotypes, that if a woman is verbally quite mouthy or confident then she must be therefore not the rape victim, not the domestic abuse victim, not the shrinking violet when it comes to him being violent to her. She was, unquestionably the victim of violence."<sup>29</sup>



In Magson's case, myths and stereotypes were played upon by prosecutors to undermine her credibility as a witness. Prosecutors made reference to Magson as a typical estate girl who had experienced 50 one-night stands. These slurs, playing on both class prejudice and misogyny, helped to discredit Magson's character and therefore undermine her account of the abuse she had experienced, thereby *\*Crim. L.R. 954* weakening her defence. As highlighted above, there is no guidance for judges and prosecutors to avoid such slurs being used in relation to defendant witnesses, including those who contend that they are themselves victims of abuse which is relevant to their alleged offence. This contrasts with the position in relation to victim witnesses in sexual offence cases, for whom longstanding judicial guidance recommends the use of directions to the jury, properly tailored to the case, to caution against

"applying stereotypical images of how an alleged victim or an alleged perpetrator of a sexual offence ought to have behaved at the time, or ought to appear while giving evidence."<sup>30</sup>

Corresponding guidance for prosecutors challenges myths and stereotypes surrounding victims of rape, including in relation to past sexual behaviour, noting for example that "[p]eople have a right to have consensual sex with however many people they want and whenever they like".<sup>31</sup> The research suggests there is a clear need for equivalent guidance in relation to defendant witnesses. This should also take account of the *Equal Treatment Bench Book*'s definition of coercive control.<sup>32</sup>

### The trial

Having gathered strong evidence of the abuse that a woman has experienced, the way in which this evidence is presented at trial is critical if self-defence is to be advanced successfully. This can be done in a number of ways such as calling witnesses who can testify to the abuse, providing evidence of the deceased's violent behaviour towards others, using expert evidence, and crucially via the defendant's testimony.

### Giving evidence

Our research found that women's experience of giving evidence in court was critical to the outcome of their trial. Lawyers described isolated cases in which women's powerful testimony of their experiences had made all the difference, in some cases leading to acquittal. However, these examples were rare. Women interviewed as part of the research described how traumatic it was to give evidence. One difficulty was having to do this in front of the deceased's family.

"During the trial I didn't want to talk about when the relationship was bad. His family were all there and I didn't want to properly address what he was in front of his family...I didn't want to be embarrassed saying what he'd done to me... there was something else that I didn't tell the court... a couple of days before the incident he said he would suffocate my two boys. He gave me Rohypnol and raped me, and then he said he was gonna kill them and make me take the blame. *\*Crim. L.R. 955* " <sup>33</sup>

Lawyers with experience of representing women in these cases described the need to prepare women practically and emotionally, as giving evidence would involve talking in detail about their experience of abuse—including incidences of violence that they may never have previously disclosed.

"In X's case I had to become the abuser in the courtroom. Stopping short of what actually happened, it is essentially a re-run of the abuse.....It takes guts for lawyers to go there — it takes time, a considerable amount of empathy, and sensitivity... the two key approaches that are needed is making sure women are given space to tell their story, and providing them with support... you have to go through that process so the jury sees, and the court room sees — but it's about preparing someone for that and mitigating the impact through support." <sup>34</sup>

We found examples of cases where the abuse was not explored at all, often for misplaced tactical reasons. A number of women said their lawyers had told them it would not be advisable to "speak ill of the dead". In the case of Sally Challen, who was originally convicted of murder for killing her abusive partner, which was then overturned on appeal,<sup>35</sup> her defence in the first trial relied solely on a medical diagnosis of depression to support diminished responsibility. The failure to present evidence of the deceased's coercive and controlling behaviour over a 40-year relationship deprived the jury of understanding how that past experience impacted on her mental health and contributed to her "out of the blue" homicidal act.

### *Focusing on the killing in isolation*

Our research found a tendency in these cases to focus on the events immediately before and after the killing. This leaves little space to consider the history of the relationship, which can reveal patterns of violence and coercive control. In contrast, one lawyer described a case in which a full history was presented to the jury, and the woman was successfully acquitted on the grounds of self-defence.

"She had also had a traumatic life, she was abused as a child. Her mother used to go out to work and leave her with the neighbours, and one neighbour used to abuse her...the jury sympathised with her, they recognised that she had had a tough life. We were able to paint this picture of the cumulative impact of abuse, both historically and then on the night of the killing, and that her reaction...was a result of her heightened sense of fear, which was reasonable in the circumstances. To do this effectively, you need to tell the full life experience, not just what happened on the night." <sup>36</sup>

In a recent case in New Zealand, a woman failed in her use of self-defence but was convicted of manslaughter and given a sentence of 11 months. Tolmie notes that here it was the successful use of the concept of entrapment, which contextualised the defendant's actions as a response to a pattern of increasing *\*Crim. L.R. 956* coercive control and violence, rather than as a response to an isolated incident of violence, that led the judge to sentence her compassionately. <sup>37</sup>

### *Expert witnesses*

One of the tools available to lawyers looking to build a strong self-defence case is the use of expert witnesses. Expert witnesses can help the jury to address gaps in knowledge, including an understanding of violence against women. However, our research found a number of problems with the use of experts in these cases, which can undermine their effectiveness.

We found there is an over-reliance on medical experts, primarily psychiatrists and psychologists, and huge variation in the quality of expert evidence. Expert evidence on coercive control can help to increase juries' understanding of how abusers use power and control in relationships to entrap women over a period of time. Yet, while the research and CWJ's practical experience suggest that medical experts often have limited understanding of coercive control, it can be difficult to get expert evidence admitted if it is not medical evidence. Admissibility depends on evidence being relevant to a matter in issue, and necessary because it is likely to be outside the court's knowledge and experience, and on the competence of the proposed expert to give that opinion. <sup>38</sup> While it is possible to have non-medical evidence admitted, notably in Sally Challen's 2019 appeal, <sup>39</sup> the challenges involved in doing so may reflect the courts' relative lack of experience in hearing such evidence.

In Martin's original trial, the defence failed to obtain any expert evidence. In preparation for her appeal a psychologist with expertise in trauma was instructed, who diagnosed post-traumatic stress disorder (PTSD) caused by previous violence and abuse. That diagnosis was confirmed by the defence psychiatrist and subsequently by two experts instructed by the Crown, and helped explain why Martin's response to the traumatic incident of strangling may have led to what might otherwise appear to be a disproportionate use of a knife in self-defence.

### **Conclusion**

There have been some notable improvements in the legal framework in recent years that should support women to access justice in these cases. For example, the introduction of coercive and controlling behaviour as a criminal offence in England and Wales, and the changes introduced in the *Coroners and Justice Act 2009* which abolished the common law partial defence of provocation <sup>40</sup> and created the new partial defence of loss of control. <sup>41</sup> Despite these changes, the vast majority of women who kill their abusers are convicted of murder and manslaughter, even in circumstances where there is evidence to support self-defence. *\*Crim. L.R. 957*

As this article has outlined, there are some significant challenges for women and their lawyers who attempt to plead self-defence. Lawyers told us that they see self-defence as a "risky" defence, with most women choosing to run it alongside the partial defences of loss of control or diminished responsibility. Our research also found evidence that women often submit a guilty plea to a lesser charge of manslaughter, even where self-defence has merit. This is in order to avoid the high stakes of going to trial, the trauma of cross-examination, being potentially convicted of murder, and receiving a longer sentence if they fail. <sup>42</sup>



The cases of Martin and Magson are clear examples of the high stakes involved. Martin's fear of being re-convicted for murder at trial led her to readily accept the plea to manslaughter when finally offered by the prosecution. However, she was sentenced to 10 years and is now back in prison serving the remainder of her sentence, for a crime for which she arguably might have been acquitted. Magson was not given the option to plead guilty to a lesser charge; instead, the CPS again pursued a murder conviction and were successful, despite evidence supporting Magson's arguments of self-defence and the partial defence of diminished responsibility.

The barriers to women being acquitted in these cases are significant, and as a result women are being convicted of crimes and are serving long sentences for crimes that, as Stark argues,<sup>43</sup> might not be interpreted as such if they had occurred outside the context of intimate partner relationships.

The challenges identified in this article can be overcome if there is the will to do so. Some challenges require system change; by increasing understanding of coercive control and violence against women across different criminal justice agencies and tackling misogyny and victim blaming. Other challenges can be overcome by improving practice, for example individual lawyers can take steps to improve their own understanding of violence against women which will help facilitate disclosure of abuse. Further legal reform would also help, including legislation to replicate the householder defence for survivors acting in self-defence against their abuser. This would allow for apparently disproportionate force (i.e. the use of weapons) to be potentially found reasonable, as is currently the case where an intruder enters a person's home, but not where women are being terrorised by men they know. This disparity alone is an example of how the law and the criminal justice system fail to recognise women's experiences, and where and from whom women are most in danger. Our research demonstrates that, despite some tweaking around the edges in recent years, there is more work to be done to improve the law, the system, and individual practice to help improve justice outcomes for women in these cases.

Lawyers and practitioners can contact the Centre for Women's Justice or Justice for Women for advice and information if they encounter women who have killed an abusive partner.

To access our research report in full, and to contact the Centre for Women's Justice go to: <http://www.centreforwomensjustice.org.uk> and <https://www.centreforwomensjustice.org.uk/women-who-kill>.

### **Sophie Kate Howes**

*Research consultant, Centre for Women's Justice*

### **Katy Swaine Williams**

*Research consultant, Centre for Women's Justice*

### **Harriet Wistrich**

*Solicitor and Director, Centre for Women's Justice*

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## **Footnotes**

- 1 *E. Stark, Coercive Control: How Men Entrap Women in Personal Life (Oxford: Oxford University Press, 2007), pp.304–5.*
- 2 The Centre for Women's Justice is a legal charity working to hold the state to account and challenge discrimination in the justice system around male violence against women and girls. <http://www.centreforwomensjustice.org.uk> [Accessed 21 August 2021].

- 3 Founded in 1990, JfW is a feminist campaigning organisation that supports, and advocates on behalf of, women who have fought back against or killed violent men. <http://www.justiceforwomen.org.uk> [Accessed 21 August 2021].
- 4 Centre for Women's Justice, "Women Who Kill: how the state criminalises women we might otherwise be burying" (13 February 2021), Centre for Women's Justice, <https://www.centreforwomensjustice.org.uk/news/2021/2/13/women-who-kill-how-the-state-criminalises-women-we-might-otherwise-be-burying> [Accessed 21 August 2021].
- 5 Between April 2008 and March 2018 in England and Wales, 108 men were killed by women who were their partners/ex-partners. In comparison, nearly eight times as many women (840) were killed by men who were their partners/ex-partners during the same period. Office for National Statistics, *Homicide in England and Wales: year ending March 2018* (London: Office for National Statistics, 2019), Appendix: Tables.
- 6 To better understand the circumstances in which women kill their male partners, the research team collected data on 92 cases that took place over a 10-year period from April 2008 to March 2018. In 77 per cent (n=71) of these cases, there is evidence to suggest that the women had experienced violence or abuse from the deceased. This is likely to be an undercount, as the research team relied on information in the public domain (largely media reports) as evidence of a history of abuse, and some women may never disclose the abuse they have experienced to others. For further information on the risk of homicide for women experiencing domestic violence, see J. Long et al, *UK Femicides 2009–2018 (Femicide Census, 2020)*.
- 7 In the remaining four cases, women were convicted of other crimes, considered unfit to stand trial, or the outcome is unknown.
- 8 This may be an underestimate, as it was not possible to track accurately the various defences used by all the women who were included on our case list, due to the limited information available about some cases.
- 9 E. Sheehy, J. Stubbs and J. Tolmie, "When self-defence fails" in K. Fitz-Gibbon and A. Freiberg, *Homicide Law Reform In Victoria: Prospect and Retrospect Federation (Annandale: Federation Press, 2015)*, pp.110–127.
- 10 Criminal Justice and Immigration Act 2008 s.76.
- 11 Criminal Justice and Immigration Act 2008 s.76.
- 12 For a discussion of the extent to which legal defences take account of fear, see: S. Edwards, "Recognising the Role of the Emotion of Fear in Offences and Defences" (2019) 83(6) *The Journal of Criminal Law* 450. Nicola Wake also considers fear, or "startlement", in her article N. Wake, "Battered Women, Startled Householders and Psychological Self-Defence: Anglo-Australian perspectives" (2013) 77(5) *J.C.L.* 433. See also C. Forrell and D. Matthews, *The Law of Her Own: the reasonable woman as a measure of man* (New York: New York University Press, 2000).
- 13 C. Bishop, "Domestic violence: the limitations of a legal response" in S. Hilda and V. Bettinson (eds), *Interdisciplinary Perspectives on Protection, Prevention and Intervention* (London: Palgrave Macmillan, 2016). See also: M. Hester, "Making it through the criminal justice system: attrition and domestic violence" (2006) 5(1) *Social Policy and Society* 79; and Centre for Women's Justice, *Centre for Women's Justice's Submission to the VAWG Strategy Call for Evidence* (London: Centre for Women's Justice, 2021), ss.1–3.
- 14 Significant developments include the abolition of the common law partial defence of provocation and introduction of the partial defence of loss of control in the [Coroners and Justice Act 2009](#); the introduction of the offence of coercive and controlling behaviour in the [Serious Crime Act 2015](#); and the UK Government's 2018 Transforming the Response to Domestic Abuse consultation and subsequent enactment of the [Domestic Abuse Act 2021](#). The [2021 Act](#) includes the first statutory definition of domestic abuse and other progressive measures such as a new standalone offence of non-fatal strangulation, but has been criticised for failing to recognise all forms of violence against women and girls as a gendered concept pursuant to the Istanbul Convention, for excluding migrant women from protection, and for failing to provide effective defences for those who are criminalised as a result of their experience of abuse (see for example: *End Violence Against Women Coalition, Domestic Abuse Bill receives Royal Assent* (2021)).
- 15 Ray [2017] *EWCA Crim* 1391; [2018] *Crim. L.R.* 342, including a quote from D. Ormerod and D. Perry, *Blackstone's Criminal Practice* (Oxford: Oxford University Press, 2016), para.A3.63. See commentary for example: S. Dickson, "Householder Self-Defence and the Erroneous Belief: What Has Changed? R v Ray (Stephen Jason) [2017] *EWCA Crim* 1391" (2018) 82(1) *Journal of Criminal Law* 14; B. O'Neill QC and B. Rich, "Self-Defence and the Householder: Disproportionate force may be unreasonable even in defence of the home" (7 December 2017), 2 *Hare Court*, <https://www.2harecourt.com/training-and-knowledge/self-defence-householder-disproportionate-force-may-unreasonable-even-defence-home/> [Accessed 22 August 2021].
- 16 Keane, McGrath [2010] *EWCA Crim* 2514; [2010] *Crim. L.R.* 393.

- 17 See: *Centre for Women's Justice, Centre for Women's Justice's Submission to the VAWG Strategy Call for Evidence* (2021), s.4; *Hansard, Vol.811* (21 April 2021). For an earlier discussion of the householder defence in this context, see: Edwards, "Recognising the Role of the Emotion of Fear in Offences and Defences" (2019) 83(6) *Journal of Criminal Law* 450.
- 18 N. Wake, "Battered Women, Startled Householders and Psychological Self-Defence: Anglo-Australian perspectives" (2013) 77(5) *JCL* 433.
- 19 E. Sheehy, J. Stubbs and J. Tolmie, "Securing fair outcomes for battered women charged with homicide: analysing defence lawyering in *R v Falls*" (2014) 38 *Melbourne Law Review* 666.
- 20 C. Wiener, "Seeing what is invisible in plain sight: policing coercive control" (2017) 56(4) *Howard Journal of Crime and Justice* 500.
- 21 This is evidenced in research. For example, in research carried out by the Office for National Statistics, Black people are shown to have lower confidence in local police than Asian, White and other ethnic groups.
- 22 Interview 19.
- 23 Lawyer interview 6.
- 24 See for example: R. Dobash and R. Dobash, "Women's violence to men in intimate relationships: working on a puzzle" (2004) 44 *British Journal of Criminology* 324.
- 25 The Centre for Women's Justice (CWJ) receives many enquiries from women who are arrested by the police, and sometime prosecuted when they are the primary victim of domestic violence. CWJ has collated evidence of such cases in order to improve criminal justice responses to domestic violence going forward (*Centre for Women's Justice, "Centre for Women's Justice's Submission to the VAWG Strategy Call for Evidence"* (2012), s.4). See also: M. Hester, *Who Does What to Whom? Gender and Domestic Violence Perpetrators* (Bristol: University of Bristol in association with the Northern Rock Foundation, 2009); and APPG on Women in the Penal System, "Arresting the entry of women into the criminal justice system" (2020), Briefing Two and Briefing Three.
- 26 [Criminal Justice Act 2003 s.101\(1\)\(g\)](#). See also: *Criminal Procedure Rules and Practice Directions 2020 Pt 21: Evidence of Bad Character*; and Crown Prosecution Service, *Legal guidance: Bad Character Evidence* (London: TSO, 2021).
- 27 Lawyer interview 4.
- 28 Sheehy, Stubbs and Tolmie, "Securing fair outcomes for battered women charged with homicide: analysing defence lawyering in *R v Falls*" (2014) 38 *Melbourne Law Review* 666.
- 29 Lawyer interview 1.
- 30 *Judicial College, Crown Court Compendium* (2020), Pt I.
- 31 *Crown Prosecution Service, Legal Guidance — Sexual Offences: Rape and Sexual Offences — Annex A: Tackling Rape Myths and Stereotypes* (London: TSO, 2021).
- 32 *Judicial College, Equal Treatment Bench Book* (London: Judiciary, 2021), paras 59–67.
- 33 Interview 9.
- 34 Lawyer interview 12
- 35 [Challen \[2019\] EWCA Crim 916](#); [\[2019\] Crim. L.R. 980](#). For further information about the case see the Justice for Women website.
- 36 Lawyer interview 7.
- 37 J. Tolmie, *Leaving the "battered woman" trope behind* (Auckland: University of Auckland, 2020), available at <https://www.auckland.ac.nz/en/news/2020/08/12/leaving-battered-woman-trope-behind.html> [Accessed 22 August 2021].
- 38 *Criminal Procedure Rules and Practice Directions 2020* (SI 2020/759); *Criminal Practice Direction V Evidence 19A Expert Evidence (as amended by the Criminal Practice Direction 2015) (Amendment No.8) [2019] EWCA 495*.
- 39 [Challen \[2019\] EWCA Crim 916](#); [\[2019\] Crim. L.R. 980](#).
- 40 *Coroners and Justice Act 2009* s.56.
- 41 *Coroners and Justice Act 2009* ss.54–55.
- 42 This is also evidenced in other research. B. Clarke and K. Chadwick, *Stories of Injustice: the Criminalisation of Women Under Joint Enterprise Laws* (Manchester: Manchester Metropolitan University, 2020).
- 43 E. Stark, *Coercive Control: How Men Entrap Women in Personal Life* (Oxford: Oxford University Press, 2007), pp.304–305.