



Ministry  
of Justice

# **Domestic Homicide Sentencing Review**

**Government Response to the  
Independent Review by Clare Wade KC**

July 2023

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of Justice

## **Domestic Homicide Sentencing Review**

Government Response to the Independent Review  
by Clare Wade KC

Presented to Parliament

by the Lord Chancellor and Secretary of State for Justice

by Command of His Majesty

July 2023



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## Foreword

Domestic homicide is one of the most horrifying offences dealt with by our criminal justice system. We should feel safest with those closest to us but each year around 90 people – mostly women – are killed by their current or former partner. These killings leave families devastated, questioning how the person who should have cared for the victim most could harm and kill them. It amounts to a life sentence of the worst grief possible.

The legal framework for sentencing murder is set out in the Sentencing Act 2020. However, it makes no reference to killings that are domestic in nature. The Government therefore committed in the summer of 2021 to carry out an independent review of the law, specifically how it applies to cases where an offender causes the death of a current or former partner. Owing to her experience working on cases involving domestic homicide and related crimes, we asked Clare Wade KC to carry out the Review. We are grateful to Clare for her work and, having published our interim response in March, the Government is now publishing this response.

This is a complex area of the law, but we are proposing changes that will give domestic homicide specialist consideration in the framework for sentencing murder. That includes making controlling and coercive behaviour a statutory aggravating and mitigating factor in sentencing. Many domestic homicides are the culmination of campaigns of domestic abuse where female victims are subjected to violent, cruel and coercive patterns of behaviour designed to gain both power and control over them by men. It is important to note, however, that when women kill their partners, it is often after having been abused in this way over many years. Whilst this will be addressed through the addition of controlling and coercive behaviour as a mitigating factor, we will also commission a review of the use of defences to murder in cases involving domestic abuse, which we invite the Law Commission to undertake.

We are also accepting the recommendations to make a murder which takes place at the end of a relationship and those which involve overkill statutory aggravating factors in sentencing for murder. It is entirely right that unnecessary and vicious force that causes unspeakable suffering is reflected in tougher sentencing for offenders. In addition, we will expand an already announced consultation on a 25-year starting point for murders with a history of controlling or coercive behaviour to explore the sentencing starting point for murders committed with a knife or other weapon which was already at the scene.

I have written to the Chair of the Sentencing Council to propose that sentencing guidelines are revised in light of Clare Wade KC's Review. The Council has resolved to set up a working group to consider the Review and response in the round.

I pay tribute to Carole Gould and Julie Devey, whom I met recently and whose daughters Ellie Gould and Poppy Devey Waterhouse were both killed at the hands of former partners. They have campaigned consistently for changes to the law since those tragic deaths and were instrumental in bringing about the Wade Review.

The Government will continue to carefully consider the sentencing framework and how it deals with domestic homicide. Ultimately, our aim is to make sure the law properly punishes those that perpetrate this horrific crime and gives victims' families justice.



**Alex Chalk KC**

Lord Chancellor and Secretary of State for Justice

# 1. Introduction

This paper sets out the Government's response to the independent Domestic Homicide Sentencing Review undertaken by Clare Wade KC. We welcome the Review and have carefully considered the findings and resulting recommendations. Our response to these recommendations involves important changes to the sentencing framework in England and Wales, including proposals for legislation.

Murder is the most serious crime a person can commit, and we must ensure that in every case the sentence is commensurate with the severity of the crime. Everyone should feel safe in their own home and our sentencing framework must reflect the seriousness of violence and abuse which is committed by those closest to them.

At the heart of this paper are proposed reforms that will update the sentencing framework for murder to ensure that this is the case. For the first time, domestic murders and the particular and wider harms that arise in these cases will be given specialist consideration in the framework.

## 1.1 The Case for Action

Around a quarter of all homicides in England and Wales are classed as domestic; that is, they are committed by the partner, ex-partner or relative of the victim. Over the last 10 years, this represents an average of nearly 160 homicides per year, with almost 90 of these being committed by a partner or ex-partner.

In March 2021, the Victims' Commissioner and Domestic Abuse Commissioner sent an open letter to the then Lord Chancellor regarding gendered disparities in the sentencing of cases of domestic homicide.<sup>1</sup>

The letter outlined concerns that some sentences received by men who kill their female partners or ex-partners do not appear to reflect the seriousness of domestic abuse, or that these homicides often follow a period of prolonged abuse.

Conversely, concerns were also expressed that a lack of understanding of domestic abuse means the sentences received by women who kill their partners, often after a long period of abuse, can appear disproportionately long.

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<sup>1</sup> <https://victimscommissioner.org.uk/document/joint-letter-from-victims-commissioner-and-domestic-abuse-commissioner-on-domestic-homicide/>



Concerns about sentencing in cases of domestic homicide have also been raised by the parents of two young women, Poppy Devey Waterhouse and Ellie Gould, who were tragically murdered by their ex-boyfriends in 2018 and 2019 respectively.

In the summer of 2021, in response to these concerns, this Government announced that we would commission an independent review of sentencing in cases of domestic homicide. Clare Wade KC was appointed as the independent reviewer, and we published her Review in March this year.

The majority of domestic homicides are committed by men against women. The Review found that in many of these cases the victim has been subjected to years of abuse before their death. The Review also found that many domestic homicides committed by men against women involve ‘overkill’, which the Review describes as the use of excessive and gratuitous violence, and that these cases often take place at the end of a relationship, when the perpetrator perceives that they can no longer control the victim.

Where female perpetrators commit domestic homicide, it is often, though not exclusively, the case that they have been the victims of abuse and have killed their abuser. Murder is the most serious crime that any person can commit but the lesser culpability of a perpetrator in these circumstances must also be recognised in our sentencing framework.

The legislation that sets out our sentencing framework for murder is contained in Schedule 21 to the Sentencing Act 2020. It was first introduced in the Criminal Justice Act 2003 some twenty years ago and it does not include any specific consideration of the seriousness of domestic homicides and the abuse that often precedes these cases.

Over the last twenty years our societal and legal understanding of domestic abuse has evolved. The Government’s landmark Domestic Abuse Act 2021 introduced a wide-ranging legal definition of domestic abuse for the first time which incorporates a range of abuses beyond physical violence, including emotional and economic abuse, and coercive or controlling behaviour.

Furthermore, the Domestic Abuse Sentencing Guideline<sup>2</sup> was produced in 2018 and specifically recognises that the domestic context of offending behaviour represents a violation of trust and security and therefore makes the offending more serious.

The Review has found that our sentencing framework for homicide does not yet reflect this increased seriousness that society now recognises in domestic cases, and that it does not adequately account for the extent of culpability arising from whether a perpetrator of homicide was also a perpetrator or victim of abuse before the killing.

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<sup>2</sup> <https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/domestic-abuse/>

This will change. Our response to the recommendations made in the Review marks a step change in the way in which our sentencing framework responds to cases of domestic murder.

For the first time, the seriousness of domestic murders and the particular harms that arise in these cases will be recognised in our sentencing framework. The perpetrators in these cases must, and will, serve sentences that truly reflect the severity of these crimes.

## 1.2 Building on Government Action

### Tackling Violence Against Women and Girls

Tackling violence against women and girls is a top priority for this Government and the changes proposed in this response sit in the context of significant, wider cross-Government work to tackle Violence Against Women and Girls. This includes the creation of the offence of controlling or coercive behaviour in intimate or family relationships in Section 76 of the Serious Crime Act 2015, and the introduction of the Domestic Abuse Act 2021 which helps to ensure that domestic abuse is properly understood, considered unacceptable and is actively challenged across statutory agencies and in public attitudes. The Domestic Abuse Act also introduced the new criminal offence of non-fatal strangulation.

In 2021 the Government also published two major strategies. Firstly, the Rape Review Action Plan committed to more than double the number of adult rape cases reaching court by the end of this Parliament, and to improving support for victims and survivors.<sup>3</sup>

Secondly, the Tackling Violence Against Women and Girls strategy helps ensure that women and girls are safe everywhere – at home, online, at work and on the streets.<sup>4</sup>

These were followed in March 2022 by the complementary Tackling Domestic Abuse Plan containing key commitments to drive further change in response to domestic abuse.<sup>5</sup>

Together, these transformative cross-government programmes work to prevent abuse, support victims and pursue perpetrators, as well as to strengthen the system's response to violence against women and girls.

### Preventing Domestic Homicides

Last year the Home Office published its Tackling Domestic Abuse Plan which introduced key commitments to reduce domestic homicide, including reform of the Domestic Homicide Review (DHR) process, introducing a domestic abuse policing and domestic homicide

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<sup>3</sup> <https://www.gov.uk/government/publications/end-to-end-rape-review-progress-report>

<sup>4</sup> <https://www.gov.uk/government/publications/tackling-violence-against-women-and-girls-strategy>

<sup>5</sup> <https://www.gov.uk/government/publications/tackling-domestic-abuse-plan>

prevention pilot, investing significantly in healthcare settings to improve agencies' abilities to identify and refer victims into support services and continuing to invest in research to build the evidence base on domestic homicide prevention.

Although the Government is committed to the fundamental principle of the DHR process, we have also recognised there is room for improvement in the way these are conducted, and how the lessons learned are applied. New reforms to this process will include refreshing the DHR statutory guidance, introducing a formal role for the Domestic Abuse Commissioner, providing a more bespoke training package for DHR Chairs and working with the Association of Police and Crime Commissioners to explore the possibility of creating a formal role for PCCs in the process.

The Home Office is also working with the National Police Chiefs' Council on a new Domestic Abuse Policing and Domestic Homicide Prevention Pilot which will identify forces that have relatively high levels of domestic homicide and serious domestic abuse incidents. These forces will be audited to ensure they are doing everything they can to prevent domestic abusers from causing harm.

Up to £7.5 million investment over three years has been committed by the Home Office for interventions in healthcare settings. This will support training for healthcare professionals and ensure they can effectively identify and refer victims and survivors to support services.

The Home Office is continuing to build the evidence base on domestic homicides through the Vulnerability and Knowledge Practice Domestic Homicide Project run by the National Police Chiefs' Council, and the College of Policing. The project counts all domestic abuse related deaths which, as well as domestic murder by a (current or ex) partner, family member or co-habitee, also counts child deaths in a domestic setting, unexplained or suspicious deaths, and suspected suicides of individuals where the police are aware of a known history of domestic abuse victimisation. Now in its third year, the Home Office has continued to provide further funding for the project to build on the initial findings and learnings from these deaths to aid the police in their response to tackling domestic abuse and to prevent further deaths.

The Home Office is also continuing to provide funding to support the provision of domestic abuse perpetrator interventions. It has invested £25m over the past two years and will continue to provide support over this spending review period. It is also designing pilots for Domestic Abuse Protection Orders, including using electronic monitoring of high-risk domestic abuse offenders, and has just launched the first central library for DHRs.

### **Sentencing and Parole**

While we must do all we can to prevent domestic homicides, when they do occur, sentencing plays a crucial role in the system – it is a key means through which the public, victims, and offenders experience justice being served. The 2019 Conservative Manifesto

committed to introduce tougher sentencing for the worst offenders and the proposed changes in this response build on the action that has already been taken to achieve this.

The Police, Crime, Sentencing and Courts Act 2022 delivered changes to ensure that the most serious and dangerous offenders spend longer in prison, serving sentences that truly reflect the severity of their crimes. These changes included abolishing automatic halfway release for certain serious sexual and violent offenders, instead requiring them to serve two-thirds of their sentence in prison. We also changed the way that discretionary life sentences are calculated, to ensure longer tariffs in these cases.

We introduced a new power to prevent the automatic release of offenders who become of significant public protection concern while in prison. We also made a Whole Life Order (life imprisonment without parole) the starting point for the premeditated murder of a child, and judges now also have the discretion to impose this sentence on offenders aged 18 to 20 in very exceptional cases.

In the Act, we also took action in response to the tragic case of Ellie Gould, who was murdered by her 17-year-old ex-boyfriend. A different sentencing framework applies to children and within this we raised the starting points for murder committed by older children to ensure sentences in these cases better reflect both the seriousness of the crime and the age of the perpetrator.

Building on this, the Victims and Prisoners Bill which is currently before Parliament contains significant new parole reforms to protect the public and victims from the most serious offenders. This includes giving the Justice Secretary the power to review the release of dangerous offenders, such as murderers or rapists, where there may be concerns.

We have also made a commitment to introduce measures that will allow victims to observe parole hearings, as part of our work to improve the transparency and openness of the parole system in England and Wales. And we have committed to developing a process to allow victims to make written submissions to the Parole Board, in addition to their Victim Personal Statement. This change will be enshrined in the Victims' Code.

These changes show that this Government is serious about keeping dangerous offenders off the streets for longer and ensuring that the punishment is appropriate for the crime. We are committed to fighting crime and protecting the public and the changes we are proposing in response to the Domestic Homicide Sentencing Review will contribute to a system that delivers justice for victims, their families and the wider public.

## 1.3 The Sentencing Framework for Murder and Manslaughter

### Murder

#### *A mandatory Life Sentence*

Anyone who is found guilty of murder will receive a mandatory life sentence.

Alongside this life sentence, the sentencing judge will also set a minimum custodial term. A minimum term is the amount of time the offender will spend in prison before the Parole Board considers, for the first time, whether the offender can safely be released to serve the rest of their life sentence on licence in the community.

If released, the offender will remain on licence for the rest of their life and can be recalled to prison at any time. The Parole Board may decide that it is never safe for the offender to be released, in which case the offender will spend all of their life sentence in prison.

#### *Schedule 21 to the Sentencing Act 2020*

Schedule 21 to the Sentencing Act 2020<sup>6</sup> (previously Schedule 21 to the Criminal Justice Act 2003) sets out the principles which the court must have regard to when assessing the seriousness of all cases of murder, to determine the appropriate minimum term to be imposed.

Schedule 21 does not set out all possible scenarios. It provides a framework for the determination of the appropriate minimum term based on the specific circumstances of each case. Judges are required to have regard to the general principles set out in Schedule 21, and must follow any relevant sentencing guidelines, unless it is contrary to the interests of justice to do so.

#### *Starting Points*

Schedule 21 contains a range of starting points for determination of the minimum term. The particular circumstances of a murder will determine which of these starting points apply to a particular case.

A baseline starting point of 15 years applies to all murder cases committed by offenders aged 18 or over.

There is a 25-year starting point for murders involving the use of a weapon which has been taken to the scene with intent, which was put in place to recognise the seriousness of the illegal possession and use of knives in public.

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<sup>6</sup> <https://www.legislation.gov.uk/ukpga/2020/17/schedule/21>

The highest starting points are 30 years and a Whole Life Order. These recognise the exceptionally and particularly high seriousness of some murders, such as those involving the murder of two or more persons or the abduction and murder of a child.

Offenders who are under 18 when they commit murder face a sliding scale of starting points ranging from 8 to 27 years, depending on the age of the offender when the offence was committed and the seriousness of the offence.

### *Aggravating and Mitigating Factors*

The starting points in Schedule 21 are just that, a starting point. After identifying the starting point, the minimum term imposed can vary significantly upwards or downwards from the initial starting point, depending on the aggravating and mitigating factors in each case.

Schedule 21 contains statutory aggravating and mitigating factors which may be relevant to the offence of murder. These statutory factors are not exhaustive, and the sentencing judge is able to consider any relevant factors in terms of aggravation and mitigation.

There is no upper or lower limit on the final minimum term to be imposed. Having taken into account all the circumstances of the case and the relevant aggravating and mitigating factors, the judge is able to impose a minimum term of any length, whatever the starting point.

### **Manslaughter**

The sentencing framework for manslaughter is contained within the Manslaughter Sentencing Guideline, which was issued by the independent Sentencing Council for England and Wales in 2018.<sup>7</sup>

The primary role of the Council is to issue guidelines on sentencing, which the courts have a statutory obligation to follow unless it would be contrary to the interests of justice to do so.

Manslaughter offending encompasses a very wide range of circumstances and therefore sentences in cases of manslaughter can vary greatly.

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<sup>7</sup> <https://www.sentencingcouncil.org.uk/wp-content/uploads/Manslaughter-definitive-guideline-Web.pdf>

## 1.4 Domestic Homicide Sentencing Review

### Terms of Reference, Purpose, and Scope

The law regarding sentencing for murder is complex and changing it is something which must be considered carefully to avoid unintended consequences.

In the summer of 2021, this Government announced that we would commission an independent review of sentencing in cases of domestic homicide. We published the Terms of Reference in November 2021.<sup>8</sup>

The purpose of the Review was to ascertain, to the extent possible, how the current law applies to cases of domestic homicide and to identify options for reform where appropriate.

The scope of the Review was to examine cases where an individual has caused the death of an intimate partner or former partner and has been charged and/or convicted of either murder or manslaughter in England and Wales.

However, some of the recommendations made in the Review are such that their application to Schedule 21 would apply to other relationships within a domestic context and to cases not within a domestic context.

### Initial Case Review

Before the appointment of an independent reviewer, an Initial Case Review was commissioned by the Government Legal Department. This involved an analysis of the sentencing remarks of 120 cases of domestic homicide. The aim of the Initial Case Review was to understand how current legislation and guidelines are operating in practice. The findings of the Initial Case Review were shared with the independent reviewer and published in March 2023.<sup>9</sup>

The Initial Case Review found that, due to the 25-year starting point, the question of whether a weapon used was brought to the scene with intent makes a significant difference to the overall length of sentence. For murders which are subject to the 15-year starting point, the application of aggravating factors often mean that the minimum term imposed is greater than 15 years, but it is unlikely to achieve parity with the minimum term imposed for those cases subject to the 25-year starting point.

Other key findings from the Initial Case Review are that each of the murders committed by female perpetrators involved the use of a weapon and that when a female kills with a weapon it often involves a single blow.

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<sup>8</sup> <https://www.gov.uk/government/publications/domestic-homicide-sentencing-review-terms-of-reference/domestic-homicide-sentencing-review-terms-of-reference>

<sup>9</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1150459/domestic-homicide-sentencing-review-case-review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1150459/domestic-homicide-sentencing-review-case-review.pdf)

While the Initial Case Review did not consider it possible or reliable to seek to identify the precise figure by which a sentence has been increased or decreased by individual aggravating or mitigating factors, it found that judges pay particular attention to previous domestic abuse in sentencing for murder. However, it also found that the weight that they attach to it can vary from case to case and that it is noteworthy that in some cases it does not serve overall to markedly increase the minimum term.

The Initial Case Review also involved the collation of relevant data from the 120 cases of domestic homicide, including the prevalence of statutory and non-statutory aggravating and mitigating factors and the relevant starting point and minimum custodial term. This data is summarised in Appendix D of Clare Wade KC's Domestic Homicide Sentencing Review.

### **Independent Reviewer and publication of the Review**

In September 2021, we announced that Clare Wade KC had been appointed as the independent reviewer. Clare Wade KC is a leading criminal defence barrister and was lead counsel in the high-profile case of Sally Challen. This case was the first time the Court of Appeal had considered coercive control in the context of the partial defences to murder, resulting in Sally Challen's murder conviction being quashed.

Clare Wade KC delivered her Domestic Homicide Sentencing Review to the Government in June 2022. We published the Review in March 2023, which makes 17 recommendations for reform.<sup>10</sup> An interim announcement was made by the Government at this time and we committed to publishing this full response this summer.<sup>11</sup>

Within the interim announcement, the Government committed to accepting several of the Review's recommendations. These commitments included making overkill and controlling or coercive behaviour statutory aggravating factors to murder, which pertain to recommendations 8 and 5 respectively. We also announced that the Lord Chancellor wrote to the Sentencing Council for England and Wales to propose that they revise their guidelines in relation to the issue of deaths which occur in the course of violence which is alleged to be consensual during a sexual encounter, which pertains to recommendation 16.

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<sup>10</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1143045/domestic-homicide-sentencing-review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1143045/domestic-homicide-sentencing-review.pdf)

<sup>11</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1143383/domestic-homicide-sentencing-review-wms.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1143383/domestic-homicide-sentencing-review-wms.pdf)



## 2. Response to the Recommendations Made by Clare Wade KC

### 2.1 General Recommendations

#### **Recommendation 1: Collection of Data**

We recommend that there should be a specific system for the collection of all relevant data in relation to all domestic homicides, which is maintained by the Home Office or the Ministry of Justice in conjunction with the Office of the Domestic Abuse Commissioner.

The Home Office currently collects a large amount of detailed information about every homicide which takes place in England and Wales, including data on domestic homicides recorded by police forces, through the Home Office Homicide Index (HOHI).<sup>12</sup> The HOHI is designated as National Statistics and the dataset is published annually, along with analysis of long-term trends.

The Home Office has just launched the beta version of their new Domestic Homicide Review (DHR) Library to ensure all published DHRs are accessible to the public, relevant stakeholders, and researchers. The DHR Library will enable far greater analysis of patterns, trends, and risk factors for domestic homicide. Ultimately, it will help to improve the whole of society's understanding of the triggers and causes of domestic homicide and the ways these horrific crimes can be prevented.

The Domestic Abuse Commissioner will be given responsibility for identifying key themes and learning opportunities from DHRs and advising the Government on where to make improvements at a national level. The Commissioner will also identify and support local and regional improvements.

The new DHR Library therefore represents acceptance of the spirit of the recommendation. The creation of a further specific system for the collection of all relevant data in relation to all domestic homicides would duplicate data collected in the DHR Library and HOHI and would therefore be unnecessary.

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<sup>12</sup> <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/appendixtables/homicideinenglandandwales>

## **Recommendation 2: Training**

We recommend mandatory training for all lawyers and judges on understanding and applying the concept of coercive control (this is with a view to achieving a more forensic approach to domestic abuse through the criminal justice system).

Apart from the Crown Prosecution Service, this recommendation sits outside the remit of the Government.

The Crown Prosecution Service already provide a comprehensive training package on domestic abuse and coercive or controlling behaviour. This includes a compulsory induction with a module dedicated to domestic abuse advocacy, as well as additional e-learning modules on domestic abuse and controlling or coercive behaviour. In their 2020/21 Business Plan, a commitment was made that they would review all face-to-face domestic abuse training, with controlling or coercive abuse being identified as an area of high priority. They are now rolling out a domestic abuse refresher course, mandated for all prosecutors dealing with domestic abuse cases, which includes a case study on controlling or coercive behaviour.

In April 2023, the Crown Prosecution Service published updated prosecution guidance on stalking and for cases involving coercive control. The updated guidance will provide a structured way for the police and Crown Prosecution Service to evaluate the behaviours exhibited in every case and assess if stalking or controlling or coercive behaviour are evident. To ensure consistency, the Crown Prosecution Service are working closely with the police to develop an additional module for secondary investigators to add to their Domestic Abuse Matters training. The Crown Prosecution Service are also developing their own bespoke modules on coercive control, stalking and the impact of trauma on domestic abuse victims to help prosecutors better recognise and prosecute behaviour driven offending and implement the legislative changes introduced by the Domestic Abuse Act 2021.

Finally, together with the police, the Crown Prosecution Service are working collaboratively with stakeholders to develop a domestic abuse Joint Justice Plan that will improve the investigation, prosecution, and collective handling of domestic abuse and better secure justice for victims.

We have reached out to the Senior Judiciary, the Law Society, Solicitors Regulation Authority, the Bar Council and Bar Standards Board regarding this recommendation to ensure we understand their position. We would welcome working with these bodies further if they require any assistance in ensuring that their training reflects our most up to date understanding of controlling or coercive behaviour.

In April, the Home Office published updated statutory guidance on controlling or coercive behaviour. This guidance is aimed at statutory and non-statutory bodies and commissioning services, including the police and criminal justice agencies. We have shared this guidance with the relevant bodies, and, should they need it, we will provide them with further relevant information to support any potential review and development of training around controlling or coercive behaviour, particularly in light of any legislative changes stemming from our response to the Review.

## 2.2 Recommendations in Relation to the Offence of Murder

### **Recommendation 3: Taking a Knife or Weapon to the Scene**

We recommend that the starting point of 25-years which applies in circumstances where a knife or other weapon is taken to the scene should be disappplied in cases of domestic murder because it denotes a starting point in which the vulnerability of the victim is not given any consideration. (The harms that paragraph 5A of the Schedule 21 to the Criminal Justice Act 2003 was introduced to prevent in 2010 are very different from the sort of harms which occur in domestic murders).

The Review recommends that the 25-year starting point for determination of the minimum term is disappplied in cases of domestic murder. This would mean that, irrespective of whether or not the murder weapon had been brought to the scene with intent, all domestic murders would have a starting point of 15 years (unless other particular circumstances of the murder mean they qualify for the 30-year starting point or the Whole Life Order starting point or the perpetrator is a child).

This would result in an unjust disparity in the way the sentencing framework responds to murders where a weapon used has been taken to the scene with intent, dependent on the nature of the connection between the victim and the perpetrator. We therefore do not accept this recommendation.

The Review and this Government are clear however that the sentencing framework must be updated to recognise the particular harms of domestic homicides. The Government's response to the recommendations in the Review mark an important step change in achieving this.

#### **Recommendation 4: Coercive Control Model**

We recommend that domestic murders should be given specialist consideration within the present sentencing framework under Schedule 21. A level of seriousness should be denoted by application of the coercive control model within the normal 15 year starting point. This is intended to ensure that gendered circumstances (such as killing at the end of a relationship and jealousy) are used to ascribe seriousness to the murder and that wider legal harms are identified and reflected in the sentence.

This recommendation, 'the coercive control model', is an overarching concept which encompasses other recommendations made in the Review.

The application of the model involves adding statutory aggravating and mitigating factors to the sentencing framework which reflect the wider harms which are specific to these cases. Statutory aggravating and mitigating factors are particular circumstances of a case which the sentencing judge must consider when determining whether the minimum custodial term imposed should depart – upwards or downwards – from the initial starting point.

This response outlines which of the recommendations we accept and will make statutory aggravating and mitigating factors for murder in Schedule 21.

#### **Recommendation 5: Coercive and Controlling Behaviour as Aggravation and Mitigation**

We recommend that where there is a history of coercive control of the victim of a murder by the perpetrator of that murder then this should be a statutory aggravating factor and that paragraphs 9 of Schedule 21 should be amended accordingly.

Conversely, we recommend that where there is a history of coercive control having been perpetrated by the victim of the murder against the offender, then this should be a statutory mitigating factor and that paragraph 10 of Schedule 21 of the Sentencing Act 2020 should be amended accordingly.

#### **Controlling or Coercive Behaviour**

This Government made controlling or coercive behaviour a criminal offence in Section 76 of the Serious Crime Act 2015. This behaviour can comprise economic, emotional or psychological abuse, technology-facilitated domestic abuse, as well as threats, whether they are accompanied or not by physical and sexual violence or abuse.

Controlling or coercive behaviour does not relate to a single incident. It is a purposeful pattern of behaviour which takes place over time which isolates the victim from support, exploits them, deprives them of independence and regulates their everyday behaviour.

The Domestic Abuse Act 2021 amended the definition of “personally connected” in relation to the offence of coercive or controlling behaviour, so that it now applies to partners, ex-partners or family members, regardless of whether the victim and perpetrator live together. Previously, “living together” was a requirement for the offence to apply.

In April 2023, the Home Office published an updated statutory guidance framework for the offence of controlling or coercive behaviour.<sup>13</sup> This guidance provides information to assist in identifying, evidencing, charging, prosecuting and convicting the offence.

### **Aggravating and Mitigating Factor**

Cases of domestic murder are rarely isolated incidents. They are often the culmination of years of abuse; abuse which, as the Review demonstrates, is underpinned by coercion and control.

In the majority of cases, this abuse has been committed by the perpetrator of the murder against the victim. A minority of cases, however, involve a victim of abuse who has killed their abuser. In most of these cases, the perpetrator of the killing and the victim of the abuse is a woman.

The Domestic Abuse Sentencing Guideline was produced in 2018 by the independent Sentencing Council and specifically recognises that the domestic context of offending behaviour represents a violation of trust and security, and therefore makes the offending more serious.

However, there are no statutory aggravating or mitigating factors within the current sentencing framework for murder which recognise the seriousness of the preceding abuse that is so common in domestic cases. This must change.

For cases where an abusive partner or family member has killed their victim, the seriousness of the preceding abuse and the experience of the victim before death will now be recognised in statute. **We will add a statutory aggravating factor to Schedule 21 for a history of controlling or coercive behaviour by the perpetrator against the victim.**

For cases where a victim of abuse has killed their abuser, often after years or even decades of abuse, their experience of abuse which preceded the killing and the impact this has on their culpability will now be recognised in statute. **We will add a statutory**

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<sup>13</sup> <https://www.gov.uk/government/publications/controlling-or-coercive-behaviour-statutory-guidance-framework>

**mitigating factor to Schedule 21 for a history of controlling or coercive behaviour by the victim against the perpetrator.**

### **Recommendation 6: End of Relationship as Aggravation**

We recommend that if a murder takes place at the end of a relationship or when the victim has expressed the desire to leave a relationship, then this should be regarded as an aggravating factor, and that paragraph 9 of Schedule 21 should be amended accordingly.

In nearly half of the murder cases analysed in the Initial Case Review there were reports of jealousy or resentment on the part of the perpetrator at the breakdown of the relationship and in the majority of these cases, this appeared to be the catalyst for the killing. In all but one of these cases, the perpetrator was male, and in over two-thirds of them, a history of behaviour which was coercive or controlling was also identified.

Further analysis of the sentencing remarks in these cases has also found that in some instances the sentencing judge appeared to consider the provocation or the distress caused to the perpetrator by the breakdown of the relationship as mitigation for the crime.

A murder involving resentment or jealousy by the perpetrator at the end of the relationship is a significant feature of cases involving behaviour which was coercive or controlling against the victim. It is the final controlling act of an abusive partner; *“if I can’t have you, no-one will”*.<sup>14</sup>

The seriousness of this will now be recognised in statute. **We will add a statutory aggravating factor to Schedule 21 for cases of murder which take place at the end of the relationship or when the victim has expressed a desire to leave the relationship.**

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<sup>14</sup> Stark (Evan), *Coercive Control “How men entrap women in personal life”* OUP (2007) p208.

### **Recommendation 7: Excluding Sexual Infidelity as Mitigation**

We recommend consistency between law and policy specifically, that present mitigating factors should be consistent with the policy underlying s.55(6)(c) Coroners and Justice Act 2009. Specifically, that sexual infidelity on the part of the deceased cannot mitigate the murder. The legislative intention underpinning the introduction of the partial defence of loss of control was to make it clear that sexual infidelity could not excuse or justify killing. Aggravating and mitigating factors in (what were) paragraphs 10 and 11 of Schedule 21 to the Criminal Justice Act 2003 were not amended when provocation was abolished. As the law stands sexual infidelity could still amount to provocation (not amounting to a defence) in the few cases where the court is considering the old law of provocation.

The partial defence to murder of provocation was replaced in the Coroners and Justice Act 2009 (C&JA) already with the new partial defence of loss of control which, if successful, results in a conviction for manslaughter rather than murder. Section 55(6)(c) of the C&JA provides that sexual infidelity cannot be regarded as a qualifying trigger for the loss of control defence. This change was made to prevent defendants being able to invoke the victim's sexual infidelity to downgrade their conviction from murder to manslaughter and reflects a modern societal understanding of sexual infidelity.

A similar change to the provisions of Schedule 21 is not required. The Domestic Abuse Sentencing Guideline already applies in appropriate circumstances and expressly states that "provocation is no mitigation to an offence in a domestic context, except in rare circumstances". Further, no evidence was provided in the Review that sexual infidelity was being taken into account inappropriately as mitigation.

The law already provides sufficient means of limiting judges' ability to treat sexual infidelity as provocation.

### **Recommendation 8: Overkill as Aggravation**

We recommend that overkill should be defined in law as a specific legal harm and that it should be an aggravating factor in murder. Paragraph 9 of Schedule 21 should be amended accordingly.

Clare Wade KC uses the term 'overkill' in the Review to refer to the use of excessive or gratuitous violence, beyond that which is necessary to kill. Overkill causes intense distress to the families of victims, knowing that the body of their loved one was violated in such a way.

The prevalence of overkill in domestic murders is striking. It was identified in over half of the murder cases analysed in the Initial Case Review. In all but one of these cases, the perpetrator was male, and in over two-thirds of the cases, the perpetrator had also exhibited behaviour which was coercive or controlling towards the victim.

The horror of overkill and the anguish it causes the families of victims must be recognised in statute. **We will add a statutory aggravating factor to Schedule 21 for cases of murder which involve violence which amounts to overkill.**

### **Recommendation 9: Strangulation as Aggravation**

We recommend that in the event of a murder by strangulation or in a murder where strangulation has occurred, then this method of killing should be a statutory aggravating factor and that paragraph 9 of Schedule 21 should be amended accordingly. This is because strangulation includes additional suffering and greater harm.

This Government recognises the significance and seriousness of strangulation as a method of exerting power and control, particularly in the context of domestic abuse where female victims are assaulted by physically stronger males.

Non-fatal strangulation was made a specific offence in England and Wales as part of the Government's landmark Domestic Abuse Act 2021, and the offence came into force in June 2022. Furthermore, in April this year the Government published an updated statutory guidance framework for controlling or coercive behaviour. This updated guidance now states that non-fatal strangulation is an indicator of controlling or coercive behaviour and is a risk factor for intimate partner homicide.

Schedule 21 generally defines the seriousness with which a murder should be considered in sentencing by the circumstances in which the killing took place, as opposed to the means by which death was caused. The starting points and statutory aggravating factors in Schedule 21 relate to either a particular need to recognise the vulnerability of the victim, (e.g., due to race, sexual orientation, religion, age or disability), or the purpose for which the murder was committed, (e.g., political, for gain or involving sexual or sadistic conduct).

The exceptions to this, where seriousness in Schedule 21 is assessed according to the method of killing, are murders involving the use of a firearm and murders where a weapon used was taken to the scene with intent. Both of these are to do with protecting the public from the illegal possession and use of weapons in public.

Making strangulation a statutory aggravating factor to murder may have the effect of placing too much emphasis on the method of killing. This could set a precedent of attempting to rank methods of killing in statute. This is a concern that Clare Wade KC recognises in the Review. It is also possible that accepting this recommendation could



have the unintended consequence of reducing the relative seriousness with which other methods of killing, not listed as statutory aggravating factors, are viewed for the purpose of sentencing.

The statutory aggravating factors in Schedule 21 are not exhaustive and the sentencing judge is able to consider any relevant factors in terms of aggravation. Analysis of sentencing remarks in the Initial Case Review show that ‘the nature of the killing’ is a non-statutory aggravating factor which is often considered in murder sentencing and can include strangulation.

### **Recommendation 10: Excluding the Use of a Weapon as Aggravation**

We recommend that the use of a weapon in domestic murder should not necessarily be seen as an aggravating factor. Our reasons for concluding that the use of a weapon does not always aggravate an offence of domestic murder or manslaughter are to do with gender. Women are rarely (if at all) able to kill men without the use of a weapon whereas this is not the same for men who often kill by means of manual strangulation.

The Sentencing Council’s Overarching Principles Guideline includes offences that involve the use or threat of a weapon as an aggravating factor.

The Guideline states that it is for the sentencing court to determine how much weight should be assigned to the aggravating and mitigating factors, taking into account all of the circumstances of the offence and the offender.

The Guideline is clear that not all factors which apply will necessarily influence the sentence, and that care should be taken to avoid double counting factors, including those already taken into account in assessing culpability or harm or those factors inherent in the offence.

The Guideline also states that relevant considerations related to the aggravating factor of the use or threat of a weapon will include the dangerousness of the weapon; whether the offender brought the weapon to the scene or just used what was available on impulse; whether the offender made or adapted something for use as a weapon, and the context in which the weapon was threatened, used, or produced.

This position is also apparent in case law. In *R v M, AM, Kika* (2010) the Court stated that the use of a weapon will always be an aggravating factor, but also allowed for the possibility that in exceptional circumstances it may not be. Examples of these exceptional circumstances are given in *R. v. Richardson (Adam)* (2006). They include the circumstance where a knife was picked up in the course of a quarrel and then used in the fatal attack.

Therefore, the discretionary framework currently in place enables judges to consider and account for the varied facts of each case.

## 2.3 Recommendations in Relation to the Offence of Manslaughter and the Sentencing Guidelines

### **Recommendation 11: Strangulation as Aggravation**

We recommend that in cases of manslaughter by way of diminished responsibility, consideration should be given to sentencing guidelines being amended to make strangulation an aggravating factor increasing seriousness.

### **Recommendation 12: Strangulation as Aggravation**

In order to maintain consistency, we recommend that in cases of manslaughter by way of loss of control, consideration should be given to sentencing guidelines being amended to make strangulation an aggravating factor increasing seriousness.

### **Recommendation 13: Coercive Control as Higher and Lower Culpability**

We recommend that in cases of manslaughter, consideration should be given to Sentencing Guidelines being amended to make coercive control on the part of the perpetrator to the killing towards the victim a factor which increases seriousness. Conversely, that consideration should be given to making coercive control on the part of the victim of the killing a mitigating factor reducing seriousness.

### **Recommendation 14: Non-Fatal Strangulation as Aggravation**

We recommend that consideration be given to whether the Definitive Guideline on Domestic Abuse be amended to denote that assaults committed by non-fatal strangulation are an aggravating factor.

### **Recommendation 15: Excluding the Use of a Weapon as Aggravation**

We recommend that in cases of domestic manslaughter, consideration should be given to Sentencing Guidelines being amended to indicate that use of a weapon is not necessarily an aggravating factor.

### **Recommendation 16: Sexual Motivation/'Rough Sex' as Higher Culpability**

We recommend that where death occurs in the course of violence which is alleged to be consensual during a sexual encounter between the perpetrator and the victim, then whether the offender is charged with unlawful act manslaughter or gross negligence manslaughter, the killing should be categorised as Category B culpability.

These recommendations fall under the remit of the independent Sentencing Council for England and Wales, rather than the Government.

The Sentencing Council for England and Wales was set up in April 2010 to promote greater transparency and consistency in sentencing, while maintaining the independence of the judiciary. The Sentencing Council is an independent, non-departmental public body.

The Council has responsibility for developing sentencing guidelines, monitoring the use of these guidelines, and assessing the impact of guidelines on sentencing practice. The Council may also be required to consider the impact of policy and legislative proposals relating to sentencing, when requested to do so by the Government.

Under section 124 of the Coroners and Justice Act 2009, the Council has a statutory duty to consider a proposal by the Lord Chancellor for sentencing guidelines to be prepared or revised. This can be in relation to a particular offence, particular category of offence, particular category of offenders, or a particular matter affecting sentencing.

Alongside publication of the Review in March 2023, the Lord Chancellor wrote to the Council to propose that the sentencing guidelines be revised in light of Recommendation 16 in the Review.

The Council has considered this proposal and the Chairman of the Council has responded to the Lord Chancellor, stating that it would not be appropriate to consider Recommendation 16 in isolation, and that the Council will await the Government's full response to the Review, to understand any implications which arise from that. The Council has also resolved to set up a working group to consider the Review in the round.

Further to the action taken alongside publication of the Review in March 2023, **the Lord Chancellor has written to the Council to propose that they revise the sentencing guidelines in light of both the Review and the Government's response to the Review. The Government commits to working collaboratively with the Council regarding the Review, its recommendations and the Government's response to the Review.**

## 2.4 Defences to Murder

### **Recommendation 17: Defences to Murder**

We recommend a comprehensive review of defences to murder in the form of a full public consultation involving all stakeholders including the higher courts judiciary. This should involve post-legislative scrutiny of the partial defence of loss of control, consideration of the defence of self-defence, and consideration of what commentators have called the ‘rough sex defence’.

We asked Clare Wade KC as part of her Review to consider the use of defences to murder by domestic abuse victims who kill their abuser. She was also asked to consider any differences in terms of case outcomes (including sentencing outcomes) arising from the use of these defences, including partial defences, when compared with charges of murder where the victim had not been an abuser.

Clare Wade KC stated in her Review that due to insufficient resource she was unable to conduct a full or detailed review of the criminal defences in domestic homicide cases. This has resulted in her recommendation that a full and comprehensive review of the defences to murder be carried out.

With the exception of duress, a range of general defences can apply in cases of murder. These include, for example, the defences of mistake or self-defence. If argued successfully, these defences will result in the accused being acquitted of murder. In addition to these full defences, there are also partial defences to murder. The partial defences are diminished responsibility, loss of control and killing in pursuance of a suicide pact. Partial defences are different to complete defences such as self-defence in that, if successfully argued, they do not result in an acquittal but reduce the offence to an act of voluntary manslaughter, not murder. In addition, in the case of infanticide, there is a standalone offence that provides an alternative verdict to murder.

We continue to believe that the use of, or obstacles to, the use of defences to murder in domestic abuse cases should be examined and therefore agree in principle with the recommendation. We also recognise the complexity of the law in this area and the wider impacts any changes to defences to murder may have. We do not however consider it necessary to extend a review to all possible defences in all murder cases. This would need to consider defences in cases which have no real bearing on domestic homicide, would add to the complexity of the review, and would further delay any action on the specific issues we asked Clare Wade KC to consider.

We therefore accept the recommendation in part, in that we will commission a more limited review. Given the complex legal issues involved, we will be inviting the Law Commission to

make an assessment of the use of defences in domestic murder and, in particular, to consider whether there is any evidence to suggest that defences are used in different ways, or to different effect, depending on the gender of the defendant. If the Law Commission identifies evidence in this regard, we will consider conducting a second stage, asking the Law Commission to make recommendations on how best to reform the law to address those issues. As would be their normal practice, the Law Commission will consult the public and interested parties.

### 3. Consultation

As part of work taking forward the response to the recommendations made in this Review, we are clear that there are areas that will benefit from further consideration. In March, we committed to consulting on a 25-year starting point for murders preceded by controlling or coercive behaviour by the perpetrator against the victim of the murder. This consultation will be expanded to explore the sentencing starting point for murders committed with a knife or other weapon which was already at the scene.

There is a 25-year starting point for murders involving the use of a weapon which has been taken to the scene with intent. This was put in place to recognise the seriousness of the illegal possession and use of knives in public. Concerns have been raised regarding the difference between this starting point and the baseline starting point for murder of 15 years which would apply if a knife or other weapon used was already at the scene (and no other circumstances of the murder qualify it for the 30-year or Whole Life Order starting points). This difference has particular relevance to cases of domestic murder, which are usually committed within a home and so, even if a knife or other weapon is used, it is more likely to have already been at the scene.

The Initial Case Review found that, due to the 25-year starting point, the question of whether a knife or other weapon used was brought to the scene with intent makes a significant difference to the overall length of sentence in domestic cases. For domestic murders which are subject to the 15-year starting point, the application of the current aggravating factors often mean that the minimum term imposed is greater than 15 years, but it is unlikely to achieve parity with the minimum term imposed for those cases subject to the 25-year starting point.

As set out in our response, we are accepting several of the recommendations made in the Review to introduce new statutory aggravating factors for murder. These changes will give domestic murders specialist consideration in the statutory framework for the first time and result in longer sentences in many of these cases. However, we are not accepting the recommendation to disapply the current 25-year starting point for murders involving a weapon taken to the scene from domestic cases. This is because to do so would create a discrepancy in how the framework responds to murders where a weapon used has been taken to the scene with intent, dependent on the nature of the connection between the victim and the perpetrator.

We will further explore these issues through a focused consultation considering the presence of controlling or coercive behaviour and exploring cases of murder where the weapon used was present at the scene. The consultation will be launched later this year.

## 4. Next Steps

### 4.1 Data and Training

#### The DHR Library

The Home Office has just launched the beta version of their new central library for all Domestic Homicide Reviews to enable far greater analysis of patterns, trends, and risk factors. The impact of this will be analysed over the coming months.

#### Training

The Crown Prosecution Service will continue to roll out a new domestic abuse refresher course, mandated for all prosecutors dealing with domestic abuse cases, including a case study on controlling or coercive behaviour.

The Crown Prosecution Service are working closely with the police to develop a module for secondary investigators to add to their Domestic Abuse Matters training. The Crown Prosecution Service are also developing their own bespoke module on coercive control, stalking and the impact of trauma on DA victims to help prosecutors better recognise and prosecute behaviour driven offending and implement the legislative changes introduced by the Domestic Abuse Act 2021.

Together with the police, the Crown Prosecution Service are working collaboratively with stakeholders to develop a domestic abuse Joint Justice Plan that will improve the investigation, prosecution, and collective handling of domestic abuse and better secure justice for victims.

The Government will also reach out again to the Senior Judiciary, the Law Society, Solicitors Regulation Authority, the Bar Council and the Bar Standards Board to offer any further relevant information to support any potential review and development of training around controlling or coercive behaviour, particularly in light of any legislative changes stemming from our response to the Review.

### 4.2 Legislation to Give Domestic Homicides Specialist Consideration in the Sentencing Framework

#### Murder

Prior to publication of this response, in March 2023 we made an interim announcement alongside publication of the Review. In this, we announced that the Government would accept the recommendations to make overkill and controlling or coercive behaviour a

statutory aggravating factor, and that we would introduce legislation to make these changes as soon as possible.

Schedule 21 to the Sentencing Act 2020 can be amended by regulations subject to the affirmative resolution procedure and there is a statutory requirement for the Lord Chancellor to consult the Sentencing Council for England and Wales before doing so. Following this consultation, the Government intends to lay a draft statutory instrument for the following measures, when Parliamentary time allows:

- Violence which amounts to overkill will be made a statutory aggravating factor for murder.
- A history of controlling or coercive behaviour by the perpetrator against the victim will be made a statutory aggravating factor for murder.
- A history of controlling or coercive behaviour by the victim against the perpetrator will be made a statutory mitigating factor for murder.

The Government will also bring forward legislation when parliamentary time allows for the following measure:

- Murders which take place at the end of the relationship or when the victim has expressed a desire to leave the relationship will be made a statutory aggravating factor for murder.

### **Manslaughter and the Sentencing Guidelines**

The Sentencing Council will consider the Lord Chancellor's proposal that they now revise the sentencing guidelines in light of both the Review and the Government's response to the Review.

The Government commits to working collaboratively with the Council regarding the Review, its recommendations and the Government's response to the Review.

## **4.3 A Review of Defences to Murder**

We will develop terms of reference for a Law Commission assessment of the use of defences in domestic murder.

## **4.4 A Public Consultation on Further Reform**

Later this year a public consultation will be launched, seeking views on whether there should be a starting point of 25 years for cases of murder where the perpetrator has controlled or coerced the victim before killing them. This consultation will also further explore the sentencing starting point for murders committed with a knife or other weapon which was already at the scene.



## 5. Equalities Statement

This Equalities Statement should be read alongside the Government’s response to the Domestic Homicide Sentencing Review (‘the Government response’).

### 5.1 Equality Duty

Section 149 of the Equality Act 2010 places a duty on Ministers and the Department, when exercising their functions, to have ‘due regard’ to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010;
- Advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
- Foster good relations between different groups (those who share a relevant protected characteristic and those who do not).

Paying ‘due regard’ needs to be proportionately considered against the nine “protected characteristics” under the Equality Act 2020 – namely race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity. This Statement considers the potential effects of the proposed changes on the protected characteristics for which we have data: race, sex and age.

### 5.2 Equality Data

The Terms of Reference for the Review provided for the examination of cases of domestic homicide (prosecuted as either murder or manslaughter) where an individual has caused the death of an intimate partner or former intimate partner. Before the appointment of an independent reviewer, an Initial Case Review was undertaken.

In considering the potential effect of the Review’s recommendations on the protected characteristics, we have analysed the relevant available data of the 120 cases from the Initial Case Review (‘the case sample’). This data relates to the protected characteristics of race, sex and age (see Appendix A).<sup>15</sup> Where relevant, data on the general population, prison population and sentencing are provided for comparison.

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<sup>15</sup> As set out in Appendix A, data on sex was identified via sentencing remarks, whilst data on ethnicity and age was taken from the Home Office Homicide Index (two cuts of the data were received - as at 15 December 2020 and as at 2 December 2022; figures are subject to revision as cases are dealt with by the police and by the courts, or as further information becomes available).

Additionally, within the sample of 120 murder and manslaughter cases, we have identified a subset of 68 murder cases likely to be impacted by legislative changes the Government is proposing to make in response to the Review. This is because the particular circumstances of these cases have relevance to the proposed additional aggravating and mitigating factors. We have stated where this subset of 68 cases may be affected differently, in comparison to the potential effect of a change which would apply to the whole sample of 120 cases.

This analysis is subjective in nature, relying upon an evaluation of the sentencing remarks. It is not possible to determine the specific adjustment that may be made for individual aggravating or mitigating factors, and therefore, how sentences will be impacted and the consequential outcomes on those with particular protected characteristics. Sentencing depends on the facts of the case, and it is for the court to determine how much weight should be assigned to aggravating or mitigating factors, and the resulting minimum tariff.

#### **Data availability and limitations**

Details on the case sample review and data on their protected characteristics, including limitations, are set out in Appendix A. 115 of the 120 cases have data on race available. This data is categorised using officer-identified classification and, as such, may not be directly comparable to an individual's self-identified ethnicity. 115 of the 120 cases have data on the ages of the perpetrator. For the analysis of race and age, cases where data are unavailable have been excluded from the analysis. All 120 cases have data on sex available.

The scope of the Review and therefore the 120 cases in the case sample was limited to cases where the victim was a partner or ex-partner of the offender. However, some of the recommendations made in the Review and the legislative changes the Government has proposed in response are such that implementing them will involve amendments to Schedule 21 that will apply to other relationships within a domestic context (for the aggravating and mitigating factor in relation to controlling or coercive behaviour) and to all cases, whether in a domestic context or not (for the aggravating factor related to overkill). We do not currently have data on the prevalence of overkill in non-domestic murders and therefore we have not been able to consider the potential effects of the changes on the protected characteristics of this wider cohort. However, we consider that to the extent the proposed changes have an indirectly discriminatory impact on other groups, any such impact would be a proportionate means of achieving the legitimate policy aim of ensuring the particular harms associated with overkill are appropriately recognised in the sentencing framework for murder.

## Protected characteristics

### Race<sup>16</sup>

92 (80% of those with data on ethnicity available) of the perpetrators in the case sample were white or white British, 12 (10%) were Asian or Asian British, 8 (7%) were black or black British, and 3 (3%) were classed as other.

People of ethnic minorities make up 27% of the prison population,<sup>17</sup> including 12% black or black British, 8% Asian or Asian British, 5% mixed ethnic group. In the general population, 18% belong to an ethnic minority group,<sup>18</sup> including 9% Asian, 4% black, 3% mixed and 2% other. In the case sample, ethnic minorities make up 20% of perpetrators. In 2022, 21% of those convicted of an offence were from an ethnic minority group<sup>19</sup> (where ethnicity was recorded).

When considering the 68 specific murder cases likely to be impacted by the proposed changes, there is a difference in ethnicity when compared to the whole case sample: the proportion of ethnic minority perpetrators rises from 20% to 26%. However, this is lower than seen for murder convictions overall. In 2022, 45% of those convicted of murder were from an ethnic minority group.<sup>20</sup>

### Sex

99 of the 120 (83%) perpetrators in the case sample were male, and 21 of the 120 (18%) were female<sup>21</sup>. In comparison, men make up 49% of the general population,<sup>22</sup> 96% of the prison population<sup>23</sup> and 78% of offenders convicted in 2022.<sup>24</sup>

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<sup>16</sup> Figures for specific ethnic groups are not all directly comparable across different sources due to different categorisation approaches.

<sup>17</sup> Annual Prison Population: 2022, [Offender management statistics quarterly: January to March 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2022)

<sup>18</sup> 2021 Census data, [Ethnic group, England and Wales - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/peoplepopulationandcommunity/ethnicityandnationality/bulletins/ethnicgroupenglandandwales/2021)

<sup>19</sup> Outcomes by Offence data tool, [Criminal Justice System statistics quarterly: December 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2022)

<sup>20</sup> Outcomes by Offence data tool, [Criminal Justice System statistics quarterly: December 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2022)

<sup>21</sup> Percentages do not add to 100% due to rounding.

<sup>22</sup> 2021 Census data, Population and household estimates, England and Wales: Census 2021, unrounded data, 2 November 2022, [Population and household estimates, England and Wales - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/peoplepopulationandcommunity/populationandhouseholds/bulletins/populationandhouseholdestimatesenglandandwales/census2021)

<sup>23</sup> At end of June 2022, Annual Prison Population: 2022, [Offender management statistics quarterly: January to March 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2022)

<sup>24</sup> Outcomes by Offence data tool, [Criminal Justice System statistics quarterly: December 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2022)

For murder, 81 of the 89 (91%) perpetrators in the case sample were male, and 8 (9%) were female.<sup>25</sup> Similarly, 94% of convictions for murder in 2022 involved male defendants.<sup>26</sup>

When considering the 68 specific murder cases likely to be impacted by the proposed changes, 67 (99%) of the perpetrators were male. Of these male perpetrators, the likely impact for 66 of the 67 cases (99%) is an increase in sentence as a result of the proposed additional aggravating factors. For the 1 (1%) female perpetrator, the likely impact on this case is uncertain due to the presence of both an additional aggravating and mitigating factor.

Although the proposed changes will only apply to murder cases, we are aware that, should the independent Sentencing Council make the equivalent changes in response to the recommendations which relate to manslaughter, the impact of this in relation to the protected characteristic of sex may differ. For manslaughter, 18 of the 31 (58%) perpetrators in the case sample were male, and 13 (42%) were female.<sup>27</sup>

### Age

The average perpetrator age across all cases in the sample is 43. At the time of the latest census,<sup>28</sup> the median age in England and Wales was 40, and more than half (52%) of the sentenced prison population is aged between 30 and 49.<sup>29</sup>

The range of perpetrator ages in the case sample spans from 17 to 84.

When considering the 68 specific murder cases that would have been impacted by the proposed changes, the age profile is slightly younger, with an average age of perpetrators of 39, primarily due to there being fewer cases with perpetrators over 60. This is also seen in murder convictions more widely. In 2022, 70% of those convicted of murder were aged between 18 and 39, with only 3% aged 60 or over.<sup>30</sup>

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<sup>25</sup> Appendix D, [Domestic Homicide Sentencing Review \(publishing.service.gov.uk\)](#)

<sup>26</sup> Outcomes by Offence data tool, [Criminal Justice System statistics quarterly: December 2022 - GOV.UK \(www.gov.uk\)](#)

<sup>27</sup> Appendix D, [Domestic Homicide Sentencing Review \(publishing.service.gov.uk\)](#)

<sup>28</sup> 2021 Census data, Population and household estimates, England and Wales: Census 2021, unrounded data, 2 November 2022, [Population and household estimates, England and Wales - Office for National Statistics \(ons.gov.uk\)](#)

<sup>29</sup> At end of June 2022, Annual Prison Population: 2022, [Offender management statistics quarterly: January to March 2022 - GOV.UK \(www.gov.uk\)](#)

<sup>30</sup> Outcomes by Offence data tool, [Criminal Justice System statistics quarterly: December 2022 - GOV.UK \(www.gov.uk\)](#)

### *Sexual orientation*

Whilst no data is available on the sexual orientation of perpetrators or victims, all 99 cases with male perpetrators had female victims.<sup>31</sup> 20 of the 21 cases with female perpetrators had male victims, and the remaining one case had both a female perpetrator and victim. As such, most victims (n=100, 83%) were female.

## **5.3 Equality Considerations**

### **Direct discrimination**

Direct discrimination occurs when a policy would result in people being treated less favourably because of a protected characteristic. Our assessment is that the proposed changes are not directly discriminatory within the meaning of the Equality Act.

Application of the proposed changes will be dependent on the particular circumstances of a case which relate to the seriousness and wider harms of domestic homicides and will apply equally to all offenders regardless of their protected characteristics. We therefore do not consider that the proposals would result in people being treated less favourably directly because they possess any particular protected characteristic.

### **Indirect discrimination**

Indirect discrimination occurs when a policy applies equally to all individuals but would put those with a particular protected characteristic at a particular disadvantage compared to those who do not share that characteristic. Our assessment is that these changes are not indirectly discriminatory within the meaning of the Equality Act.

By virtue of the overrepresentation of this group in the cohort of offender to which these changes will apply, we acknowledge that these changes are more likely to affect male offenders. In general men are overrepresented at most stages throughout the criminal justice system, including in relation to homicide offences. Additionally, the majority (99%) of the 68 specific murder cases likely to be impacted by the proposed changes had male perpetrators.

We do not, however, consider that this overrepresentation will likely result in any particular disadvantage for male offenders or for any other offenders with particular protected characteristics. Our assessment is that the changes described by these policy proposals are a proportionate means of achieving the legitimate policy aim of ensuring that the seriousness of domestic murders and the particular and wider harms that arise in these cases is reflected in the sentencing framework. Overall, therefore, we do not consider that these proposed changes are likely to result in any unlawful indirect discrimination.

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<sup>31</sup> Appendix D, [Domestic Homicide Sentencing Review \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

### **Harassment and victimisation**

We do not consider there to be a risk of harassment or victimisation within the meaning of the Equality Act as a result of these changes.

### **Advancing equality of opportunity**

The overall policy recommendations are considered likely to advance equality of opportunity for women through enabling greater protection through the strengthening of sentences for domestic homicide cases.

### **Fostering good relations**

We do not consider that these changes would have any significant impact on the achievement of this objective.

### **Monitoring and evaluation**

We will continue to pay due regard to the Public Sector Equality Duty as preparations are made to bring forward the proposed legislative changes.

# Appendix A: Case Sample Data on Protected Characteristics

## Context

This Appendix sets out the characteristics of the case review sample used to inform the Equality Statement.

The independent Domestic Homicide Sentencing Review (DHSR) was informed by the following data and evidence:

- a) Data on police recorded domestic homicides between April 2016 and March 2020 from the Home Office Homicide Index were shared with the Ministry of Justice to support the independent Domestic Homicide Sentencing Review. In line with the review's definition of 'domestic', only homicide cases where the perpetrator was an intimate partner and/or ex-partner were included in the data received. A summary of this data was published within the Review at Appendix E.
- b) An Initial Case Review of the sentencing remarks of a sample of 120 cases of domestic homicide (murder and manslaughter cases) between 2018 and 2020 where the victim was a partner or ex-partner of the offender were analysed. The cases were identified from data supplied by the Crown Prosecution Service/HMCTS, the Home Office Homicide Index and some ad hoc research. A summary of the findings was published within the Review at Appendix D.

## Notes on the Home Office Homicide Data

- Data as at point it was provided.<sup>32</sup> Figures are subject to revision as cases are dealt with by the police and by the courts, or as further information becomes available.
- For the purposes of the Homicide Index, analyses are based on the principal suspect in a given homicide case.<sup>33</sup>

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<sup>32</sup> Data was provided to the Ministry of Justice as at 15 December 2020 and as at 2 December 2022.

<sup>33</sup> Suspects in a homicide case are defined as either: a person who has been charged with a homicide offence, including those who were subsequently convicted and those awaiting trial or a person who is suspected by the police of having committed the offence but is known to have died or died by suicide. Suspects that were acquitted were included in the data received and analysis within the Review, which departs from published statistics.

### Notes on the case file review of sentencing remarks

- Not all relevant cases from the period reviewed may have been identified and therefore the sample may not be fully representative.
- The analysis set out below includes pulling out a subset of the case review sample based on the presence of certain factors. As sentencing remarks are a summary of how the sentence was reached and are not a full representation of the case, and given the known underreporting of domestic abuse, we cannot be certain that these factors were not present in other cases within the sample. Additionally, there was an element of subjective interpretation on the presence of certain factors, such as overkill.
- Care must be taken when interpreting small numbers to form conclusions.
- Data from these sources has been used to inform the Equality Statement included in this response, both on the 120 cases included in the case file review conducted and looking at a specific cohort within this sample (68 cases) identified as most likely to be affected by changes set out in this response. This subset is made up of murder cases involving overkill; a history of controlling or coercive behaviour (CCB) by the perpetrator; the homicide taking place after the end of a relationship; or domestic abuse by the victim against the perpetrator.
- Many murder cases reviewed had more than one of these factors involved. For example, in more than two thirds (68%) of murder cases with overkill identified, there was also a history of CCB by the perpetrator against the victim; and in almost two fifths (38%) of overkill cases the murder had taken place at the end of the relationship. In murders that took place at the end of the relationship, almost two thirds (62%) involved CCB by the perpetrator. This was even higher for murder cases involving the end of a relationship and/or jealousy, with over two thirds (67%) of these cases also involving CCB by the perpetrator.

### Data on Protected Characteristics

Data on the sex of the perpetrator and victim were included in the case file review. Data on the age (at time of offence) and ethnicity of the suspect was taken from the Home Office Homicide Index where available.

A summary of the data on the protected characteristics of the case review sample and subset of specific murder cases is collated and set out below. Percentages in tables may not add to 100% due to rounding.



## Sex

**Table 1: Case review sample by sex of perpetrator**

Sex	Full sample (120 cases)	Subset of murder cases (68 cases)
Male	99 (83%)	67 (99%)
Female	21 (18%)	1 (1%)

Source: Sex of the perpetrator was identified from sentencing remarks.

## Ethnicity

**Table 2: Case review sample by ethnicity of suspect**

Ethnicity	Full sample (120 cases)	Subset of murder cases (68 cases)
White	92 (77%)	49 (72%)
Black	8 (7%)	5 (7%)
Asian	12 (10%)	9 (13%)
Other	3 (3%)	3 (4%)
Unknown	5 (4%)	2 (3%)

Source: Data on the ethnicity of the suspect taken from the Home Office Homicide Index.

## Age

**Table 3: Case review sample by age of suspect**

Age	Full sample (120 cases)	Subset of murder cases (68 cases)
Under 18	1 (1%)	1 (1%)
18 to 24	6 (5%)	3 (4%)
25 to 29	12 (10%)	10 (15%)
30 to 39	41 (34%)	25 (37%)
40 to 49	18 (15%)	11 (16%)
50 to 59	18 (15%)	14 (21%)
60 to 69	12 (10%)	0
70 or over	7 (6%)	2 (3%)
Unknown	5 (4%)	2 (3%)
Average age	43	39
Range	17 – 84	17 – 73

Source: Data on the age of the suspect taken from the Home Office Homicide Index.

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