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These are the views of:	<i>Welsh Women's Aid (Third Sector) - the national charity in Wales working to end domestic abuse and all forms of violence against women.</i>

About Welsh Women's Aid

Welsh Women's Aid is the umbrella organisation in Wales that supports and provides national representation for independent third sector violence against women, domestic abuse, and sexual violence (VAWDASV) specialist services in Wales. Our membership comprises of 20 specialist support services. These services deliver lifesaving and life-changing support and preventative work in response to violence against women, including domestic abuse and sexual violence against children and young people, men and boys, trans and non-binary people, as part of a network of UK provision. As an umbrella organisation, our primary purpose is to prevent domestic abuse, sexual violence, and all forms of violence against women and ensure high quality services for survivors that are needs-led, gender responsive and holistic. We collaborate nationally to integrate and improve community responses and practice in Wales. We also award the Wales National Quality Service Standards (NQSS), a national accreditation framework for domestic abuse specialist services in Wales (supported by the Welsh Government) as part of a UK suite of integrated accreditation systems and frameworks. (More information on the NQSS can be found [here](#)).

Introduction

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Around a quarter of all homicides in England and Wales are domestic homicides, with the vast majority perpetrated by men against women. In the three years ending March 2022, there were 249 female domestic homicide victims in England and Wales, and in 97% of those cases, the suspect was a male partner or ex-partner¹. Despite this, the legal framework for sentencing murder, set out in the Sentencing Act 2020, makes no specific reference to either killings that are domestic in nature or to the abuse that precedes them.

Welsh Women's Aid welcomes this consultation. The current sentencing framework is not fit for purpose and does not make proper consideration of the violence perpetrated against women both during and before homicide. We are grateful for the legislative change that has taken place since the Domestic Homicide Sentencing Review was published in March 2023², including the introduction of statutory aggravating factors for a history of coercive or controlling behaviour and violence which amounts to overkill and statutory mitigating factors for a history of coercive or controlling behaviour by the victim against the perpetrator. We also urge the Government to continue their promise to create a statutory aggravating factor for killing connected to the end of a relationship or the intention to end a relationship.

We consider this consultation to be well-intentioned, and we appreciate the seriousness with which the UK Government is considering domestic homicide. However, we have chosen to respond to the consultation questions within this narrative rather than in the requested format as many of our concerns are mirrored across the two main suggested changes – that is, introducing minimum starting points above the baseline of 15 years for murder preceded by a history of controlling or coercive behaviour, and for all murders committed with a knife or other weapon – and we want to ensure these are captured clearly and thematically. However, we wish to make it clear that we do not support the proposed changes. We have several concerns about implications of the legislative

¹<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabusevictimcharacteristicsenglandandwales/yearendingmarch2023#domestic-homicide>

² <https://www.gov.uk/guidance/domestic-homicide-sentencing-review>

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changes suggested and their implementation, which will be set out in our answers to the questions below.

Minimum starting points

We would like to start this point by acknowledging the seriousness of domestic homicide. There is no doubt that the killing of women, by men, is an incredibly serious crime. Over half of the domestic homicides analysed in the Domestic Homicide Sentencing Review involved a history of coercive and controlling behaviour, and over 60% involved sustained and excessive violence, known as 'overkill'³. Most of these women were subjected to prolonged abuse prior to their deaths and they leave behind families who must contend with the most severe grief and trauma.

We appreciate there is an anomaly in the sentencing framework in that murder involving a knife or weapon taken to the scene has a minimum starting point of 25 years, whereas that involving a weapon already at the scene has a minimum starting point of 15 years. With most domestic homicides involving overkill and falling within the 15-year minimum starting point, we have no doubt that the sentencing framework does not properly acknowledge the seriousness or severity of domestic homicide, or the violence perpetrated by men against women. However, we do not believe that increasing the minimum starting terms for murder preceded by coercive or controlling behaviour or for all murders committed with a knife or other weapon will adequately address the gendered nature of domestic homicide.

To start with, it cannot be certain that increasing the minimum sentencing for these cases will act as a preventative measure. The minimum starting point for murders committed with a knife or other weapon taken to the scene with intent was introduced in 2010 following the murder of Ben Kinsella. While we appreciate the intention of this was to reflect the seriousness of these murders, this law has not acted as a deterrent. In the year to March 2023, the total number of offences involving a

³ <https://assets.publishing.service.gov.uk/media/6411ce52d3bf7f79df1aa9c4/domestic-homicide-sentencing-review.pdf>





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knife or sharp instrument increased by 6%⁴, and the general number has increased consistently since 2010, from 36,000 to 50,500⁵. As such, we believe raising the minimum starting point for such serious crimes does little in terms of preventing them happening in the first place.

Secondly, we are concerned that this will create even more discrepancies in the sentencing framework. Strangulation and asphyxiation are the second most common method of killing in female homicides, after stabbing⁶, accounting for 24 domestic homicides perpetrated by men against women in 2019-2020. In the Domestic Homicide Sentencing Review, out of the 120 cases of domestic homicide analysed, 35 cases (29%) involved strangulation, the majority of which (32 of 35 cases or 91%) involved manual strangulation. Despite this, in 23% of the cases, the perpetrator was convicted of manslaughter and in 20 cases, there was no mention of the method of killing in the aggravating factors⁷. We are concerned that if the minimum sentence for all murders using a weapon is raised to 25 years, this will both create a discrepancy in the charging rates for domestic homicide perpetrated with a weapon and that which occurs by strangulation and, even worse, may incentivise men to kill via strangulation to receive a lesser sentence. To this end, we strongly endorse the recommendation made in the Domestic Homicide Sentencing Review that in causes of murder by strangulation or murder where strangulation has occurred, this method of killing should be a statutory aggravating factor.

As stated previously, we welcome the introduction of statutory aggravating factors for a history of coercive or controlling behaviour and violence which amounts to overkill and statutory mitigating factors for a history of coercive or controlling behaviour by the victim against the perpetrator. We hope that if applied properly, these will acknowledge the seriousness of these crimes in a more sophisticated way, and we urge the UK Government to take several further steps to ensure this happens, as outlined below.

⁴ <https://researchbriefings.files.parliament.uk/documents/SN04304/SN04304.pdf>

⁵ ibid

⁶ https://www.femicidecensus.org/wp-content/uploads/2022/02/010998-2020-Femicide-Report_V2.pdf

⁷ <https://assets.publishing.service.gov.uk/media/6411ce52d3bf7f79df1aa9c4/domestic-homicide-sentencing-review.pdf>

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Schedule 21

We wish to use this opportunity to outline our general concerns around schedule 21 and the need for reform within the sentencing framework itself. The aim of Schedule 21 is the 'determination of minimum term in relation to mandatory life sentence for murder'⁸, however, the application of the minimum starting points remains both objective and varied. The legislation is such that the category of cases that may fall within each class is not wholly prescriptive. Paragraph 2 of Schedule 21 states that "cases that would *normally* fall within each sub-paragraph *include*". This is not a closed list, and it is at judges' discretion to determine which cases fall into each class. The lack of specific guidelines for the most serious cases leads to large discrepancies in the sentences that are handed out, and we believe this is one of the most fundamental problems in sentencing domestic homicide and must be addressed directly.

It is worth noting that in their response to the Domestic Homicide Sentencing Review, the Government noted that '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'⁹, however, this appears to be excepted in cases where a knife or other weapon was used.

Also in response to the Domestic Homicide Sentencing Review, the Government stated that the discretionary framework currently in place enables judges to consider and account for the varied facts of each case. There appears to be a juxtaposition in the Government's approach in that they advocate for a discretionary framework but also via this consultation, wish to create a more blanket approach by applying more general minimum starting points for sentencing.

⁸ <https://www.legislation.gov.uk/ukpga/2020/17/schedule/21/enacted>

⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1172232/domestic-homicide-sentencing-review-case-review-response.pdf





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In sum, we believe the mechanisms via which sentences are determined via Schedule 21 are fundamentally flawed and this, in turn, leads to both discrepancies in the tariffs handed out and a minimisation of the gendered nature of domestic homicide. The UK Government would be better considering whether Schedule 21 is fit for purpose and whether the introduction of guidelines for the most serious cases, such as domestic homicide, would better circumvent the issues at hand.

Understanding of coercive and controlling behaviour

We strongly disagree that should any changes be implemented, they should only apply where the controlling or coercive behaviour was at the 'upper end of the scale of seriousness'.

First and foremost, all coercive and controlling behaviour is serious. There is a growing understanding that through its insidiousness, coercive and controlling behaviour often presents the most risk to survivors, particularly at the end of a relationship. The Domestic Homicide Sentencing Review identified a gap between the law which creates an offence of controlling and coercive behaviour and the implementation of it, which relies more widely on improvements in the sentencing framework and better practices among those who enforce, prosecute, and apply the laws. In the review, it is argued that "a way to define the gravity of domestic murder and pre-empt any injustice which flows from the tension described above would be to use the coercive control theory to ascribe a level of seriousness to a murder"¹⁰. The intention of this is to set out a way through which coercive and controlling behaviour should be assessed by the courts, rather than to ascribe seriousness to individual cases of coercing and controlling behaviour. We strongly support this and suggest the UK Government fully implement Recommendation 4 of the Domestic Homicide Sentencing Review which suggests that domestic murders are given specialist consideration within the present sentencing framework under Schedule 21 and that the level of seriousness should be determined by application of the coercive control model within the normal 15 year starting point.

¹⁰ <https://assets.publishing.service.gov.uk/media/6411ce52d3bf7f79df1aa9c4/domestic-homicide-sentencing-review.pdf>





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Secondly, understanding of coercive and controlling behaviour within the criminal justice system remains poor. In a review of the controlling and coercive behaviour offence¹¹, the Home Office found that understanding is still poor, with only a 'small part' of all coercive and controlling behaviour coming to the attention of police or being recorded as controlling or coercive behaviour. The Home Office themselves identified that "there is a need for more and better training for the police, prosecutors and judges on CCB". Due to this, we are concerned that this would not be applied properly or consistently, and that the risk associated with coercive and controlling behaviour would be underestimated. To this end, we strongly endorse the recommendation made in the Domestic Homicide Sentencing Review (Recommendation 2) which calls for mandatory training for all lawyers and judges on understanding and applying the concept of coercive control.

Finally, due to its very nature, coercive and controlling behaviour is hard to evidence. Survivors often do not know they are experiencing controlling or coercive behaviour and even if they do, many do not report it. It is a tactic of abusers to make survivors question their own reality (termed gaslighting), to blame themselves, to isolate them and to conceal their, and the perpetrators' behaviour. It can be a very hidden form of abuse and can be incredibly difficult for survivors to explain and to evidence. Even when they do report, it is rare that police investigate and prosecute it. In the year ending March 2023, there were 43,774 offences of coercive control recorded by the police, only a small increase from the previous year¹². However, in the same year, only 2,720 controlling or coercive behaviour offences reached a first hearing at magistrates' court¹³. In total, since the introduction of the offence in 2015, only 9,707 cases have reached a first hearing¹⁴. Due to this, we believe that even where coercive and controlling behaviour was present, its seriousness will not be properly taken into consideration during criminal proceedings and will not therefore be used sufficiently as a factor when sentencing perpetrators.

¹¹ <https://www.gov.uk/government/publications/review-of-the-controlling-or-coercive-behaviour-offence>

¹² <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabuseprevalenceandtrendsendlandandwales/yearendingmar2023#domestic-abuse-in-england-and-wales-data>

¹³ <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/domesticabuseandthecriminaljusticesystemappendixtables>

¹⁴ *ibid*

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Women who kill their violent partners

One of our main concerns around the suggested changes to the minimum starting points in question is the unintended consequences of higher sentences on women who kill their abusive partners.

In most cases of homicide involving women who kill, the women had endured significant and sustained abuse. Research from the Centre for Women's Justice in 2021 found that 77% of women who killed their partner or ex-partner had been subject to abuse from the person they killed¹⁵. Research has also shown that in the majority of these cases, this was a last resort to ensure their safety, because they had reported the abuse they had experienced but had been failed by the criminal justice system either through poor responses from the police or failure to pursue proper prosecution¹⁶.

In most of these cases, the perpetrator was killed using a knife or other weapon, largely due to the imbalance of power, meaning women who kill are sentenced more heavily for domestic homicide, largely due to the minimum starting points in the sentencing framework due to the use of aggravating factors related to the use of a weapon. Though a direct cross-comparison between sentences for men and women is difficult due to contextual factors, research by the Centre of Women's Justice found that lawyers feel the average length for murder and manslaughter for women who have been convicted have been on an upward trend, with an analysis of 92 cases showing 30% of women convicted of murder were sentenced to 20 years or more, and 35% to 15-19 years¹⁷. We are concerned that if implemented, a minimum starting point of 25 years for all murder involving a knife or other weapon may further increase sentence lengths for women convicted of murder after having experienced prolonged abuse. This is a particular concern for cases involving Black and minoritised ethnic women. Barriers to disclosure for these women can be exacerbated by other cultural factors,

¹⁵https://static1.squarespace.com/static/5aa98420f2e6b1ba0c874e42/t/602a9a87e96acc025de5de67/1613404821139/CWJ_WomenWhoKill_Rpt_WEB-3+small.pdf

¹⁶ibid

¹⁷ ibid

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thereby making it harder and more complex for these women to report and evidence abusive behaviours.

As such, we believe that sentencing lengths for domestic homicide are addressed much more logically through statutory aggravating and mitigating factors, which include a statutory mitigating factor of a history of controlling or coercive behaviour by the victim against the perpetrator. That said, should these changes be implemented, we endorse the recommendation made in the Domestic Homicide Sentencing Review that the use of a weapon in domestic murders should not necessarily be seen as an aggravating factor and we do agree they should be disapplied in cases where a victim of abuse has killed their abuser. Further, we believe there must be proper mitigation for this throughout the justice system including proper training on controlling and coercive behaviour for all police, lawyers, and judges, as outlined previously.

Reform of the criminal justice system

The criminal justice system more broadly needs significant reform to properly address domestic homicide and coercive and controlling behaviour during criminal proceedings.

Firstly, as outlined above, many survivors do not report abuse or report it after many years and many repeated incidents. Survivors' lack of trust in the police and the criminal justice system is systemic and growing. Nationwide research commissioned by the End Violence Against Women Coalition after the death of Sarah Everard showed that 1 in 10 women were less likely to report sexual assault to the police, and 76% of women thought the culture of policing had to change to better respond to violence against women and girls¹⁸. More recent data from the Victims Commissioner found that 71% of respondents were dissatisfied with the police response to a crime and 34% said they would not report a crime to the police again¹⁹. Further, only 8% of respondents were confident that they could receive justice by reporting a crime. This is a common factor for attrition in criminal proceedings. In

¹⁸ https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/2021/11/EVAW_SexualViolence_211028-1.xls-Compatibility-Mode.pdf

¹⁹ <https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/6/2023/11/Victim-Survey-2022.pdf>

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the above-mentioned research, 82% of respondents reported not being confident that police thoroughly investigated the crime²⁰.

Secondly, the above is compounded by the engrained misogyny within the criminal justice system. In their letter preceding the Domestic Homicide Review, the Victims Commissioner and the Domestic Abuse Commissioner outlined a 'culture of misogyny throughout the criminal justice system' which fails to address the crimes that disproportionately affect women²¹. Since then, nothing has changed. In the police forces' reviews of police-perpetrated violence against women and girls, an awareness-raising campaign by one force had led to the number of misconduct cases of police-perpetrated domestic abuse and sexual violence has grown by 80%²². Combined, these show an endemic problem of both violence against women and girls within the justice system and a failure by statutory organisation to properly investigate and tackle violence against women and girls more broadly. These must be addressed to bring about trust and ensure proper understanding and survivor safety throughout criminal proceedings.

Thirdly, in cases of domestic murder, proceedings are de facto conducted post-mortem and the circumstances leading up to the murder are rarely investigated in sufficient detail. We need wholesale reform of the criminal justice system, including increasing awareness across the police and the judiciary on all forms of violence against women, to ensure all forms of VAWG are investigated in detail to ensure the statutory aggravating and mitigating factors can be applied properly and true justice can be served.

Fourthly, we wish to express our concerns about the unmitigated consequences of disparity in the sentencing framework. It is well-known that those from Black and minoritised ethnic groups are over-represented throughout the criminal justice system²³ and are often sentenced more harshly for

²⁰ <https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/6/2023/11/Victim-Survey-2022.pdf>

²¹ <https://victimscommissioner.org.uk/news/response-to-domestic-homicide-shows-a-culture-of-misogyny-in-the-criminal-justice-system-say-commissioners/>

²² <https://cdn.prgloo.com/media/07786b4ff5d848f88a22366aa7205b2f.pdf>

²³ <https://www.gov.uk/government/statistics/ethnicity-and-the-criminal-justice-system-2022/statistics-on-ethnicity-and-the-criminal-justice-system-2022-html>

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equivalent offences. The Lammy Review, published in 2017, found that arrest rates were higher for Black and minoritised ethnic groups, they were more likely to plead not guilty and thereby receive more punitive sentences, particularly for sexual offences and homicides, and they were more likely to receive prison sentences for drug offences²⁴. A study cited in the report found that under similar circumstances, offenders from Black, Asian, and Chinese or other backgrounds were significantly more likely to be sentenced²⁵. Similarly, the Sentencing Council themselves found that even after controlling for differentials between cases, offenders from different ethnicities receive different sentences which the main guideline factors do not account for²⁶. Consequently, when determining the minimum starting points, we urge the UK Government to take all steps possible to eliminate discrepancies in the frameworks and thereby ensure parity of treatment of all people within the criminal justice system.

Combined, these show that significant reform of the criminal justice system must accompany these changes, whether or not they are implemented, in order to provide proper justice for victims of domestic homicide and their families.

Conclusion

For the reasons outlined above, Welsh Women's Aid do not agree with the proposals to introduce a minimum starting point above the baseline starting point of 15 years to cases of murder preceded by a history of controlling or coercive behaviour against the murder victim or to a minimum starting point above the baseline starting point of 15 years for all murders committed with a knife or weapon. We believe the seriousness of domestic homicide must be addressed better within the sentencing framework and this should be done through wider programmes of reform including examining the efficacy of Schedule 21, introducing and implementing sufficient statutory aggravating and mitigating

²⁴ <https://assets.publishing.service.gov.uk/media/5a82009040f0b62305b91f49/lammy-review-final-report.pdf>

²⁵ <https://www.gov.uk/government/statistics/associations-between-ethnic-background-and-being-sentenced-to-prison-in-the-crown-court-in-england-and-wales-in-2015>

²⁶ <https://www.sentencingcouncil.org.uk/wp-content/uploads/Sex-and-ethnicity-analysis-final-1.pdf>

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factors which take into account the gendered nature of domestic homicide, and ensuring controlling and coercive behaviour is better understood across the criminal justice system.

Many of the ways through which this could be achieved were set out via the recommendations in the Domestic Homicide Sentencing Review and we urge the UK Government to commit to implementing these in full, rather than in the piecemeal nature that has occurred to date.

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