

Update from Katy Swaine Williams Prison Reform trust

Dear all

I hope you have all been well since I was last in touch. Please see below a general round-up of some recent articles, research and consultations relevant to our work to improve legal protection for domestic abuse survivors who offend – and a request for help with briefing peers. I conclude with an overview of the results of our recent lawyers' survey

Baroness Helena Kennedy will be tabling our proposed statutory defences following 2nd reading of the Domestic Abuse Bill. We had thought this might take place in mid-October but I have not had any news to that effect. In any event, I plan to start sending out email briefings next week to key peers who we hope will support the proposals; we already have confirmed support from the Rt Reverend Rachel Treweek, Lord Bishop of Gloucester. She will shortly be disseminating a podcast about the Bill which includes mention of our proposals – I will circulate a link when it is released. **Please let me know if you are briefing peers on the Bill and would be happy to include a short piece of text in support of our proposals.**

There are a number of key pieces of research ongoing relating to this work, some of which I understand will be publishing findings in the not too distant future – it has been great to hear about some emerging findings and I hope we may be able to use some of them to support our arguments in the House of Lords.

Thanks and congratulations to the ever brilliant Prem Ahluwalia, who had an article about the proposals published in Counsel magazine last month – read it here: <http://www.prisonreformtrust.org.uk/WhatWeDo/Projectsresearch/Women/News/vw/1/ItemID/930>

If you haven't already seen it, take a look at the Howard League's recently published research for the APPG on Women in the Penal System, which highlights the prevalence of arrests of women for violent offences committed in the context of domestic abuse, only for them later to be released without charge (in other words, cases in which they should not have been arrested at all). This is very useful for our proposals and I have copied in Lorraine Atkinson, who led the research: <https://howardleague.org/wp-content/uploads/2020/09/APPG-on-Women-in-the-Penal-System-briefing-2-FINAL.pdf>

This chimes with findings of our own qualitative research about domestic abuse as a driver of women's violent offending, not only against perpetrators but also against police and emergency workers, which we fed into the PRT submission to the Sentencing Council's consultation on its draft guideline on assault offences, available here: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Consultation%20responses/Sentencing%20Council%20Assault%20Offences.pdf>

Some of you have already seen Alex Chalk's reply to Jenny's recent letter (copy attached). His characterization of criticisms of the s45 defence as it currently operates, is at odds with the findings of the government-commissioned independent review of the defence which took place last year and reached a different conclusion (available here: <https://www.gov.uk/government/publications/independent-review-of-the-modern-slavery-act-final-report>):

'Law enforcement participants reported concerns that the defence is being used as a 'loophole' for offenders identifying as victims. However, other stakeholders presented evidence that victims continue to be prosecuted for offences they were forced to commit...

'While we recognise the challenges faced by law enforcement and acknowledge that some individuals may try to misuse the statutory defence, this needs to be balanced against ensuring the defence is always accessible to genuine victims. The jury process is in place to test any concerns about a defendant's status, and a competent investigation will enable a court to determine where justice lies.

'There is a natural tension which exists in any defence, between the potential for misuse and the need to protect victims. We believe a balance needs to be maintained, and the current legislation, case-law and the system of trial by jury achieves the right balance. Protecting vulnerable individuals is the purpose of the Act, and the recent Court of Appeal judgement [clarifying that the burden of proof lies with the Crown] helps ensure this protection.

'Law enforcement bodies and prosecutors should make provision to conduct thorough investigations and gather sufficient evidence to demonstrate whether an individual is a victim or not.'

Finally, She has summarised the final draft report of findings from our survey this summer of criminal defence lawyers. the results below. You will see that the responses from 31 lawyers and one victim advocate reveal a range of views and experiences. These are particularly mixed when it comes to self-defence, and less so in relation to duress, but most respondents agreed that our proposed amendments would provide more effective defences where offending results from domestic abuse.

Self-defence proposal

More respondents agreed than disagreed that self-defence is not an effective defence in cases where the defendant claimed to have been defending themselves against someone inflicting domestic abuse on them. Views were mixed and often strongly held. Half the respondents agreed, while just over a third disagreed. However more than two-thirds of respondents (22) agreed that PRT's self-defence proposal would provide a more effective defence in these circumstances, including 12 who strongly agreed. Meanwhile just over a quarter (8) disagreed, including two who strongly disagreed.

Duress/s.45 proposal:

Over three-quarters of the 32 respondents (25) agreed that duress is not an effective defence for defendants accused of offences they committed as a direct result of their experience of domestic abuse, including 12 who strongly agreed. Five disagreed, including four who strongly disagreed. Three-quarters of respondents (24 out of 32) agreed that our Section 45 proposal would provide a more effective defence than duress in these circumstances, while five (2%) disagreed.

The Rt Reverend Rachel Treweek, Bishop of Gloucester, has launched this podcast today about the Domestic Abuse Bill: <https://www.gloucester.anglican.org/2020/domestic-abuse-bill/>

This is a discussion between Rachel and six women involved in work on the Bill – Nicole Jacobs, Designate Domestic Abuse Commissioner; Robyn Andréo-Boosey of IC Change; Niki Gould of the Nelson Trust; Huda Jawad of Faith and VAWG Coalition; Pragna Patel of Southall Black Sisters; Andrea Simon of End Violence Against Women Coalition; and myself.

Key points covered in the discussion include the need for better protection and support for migrant women, the need for increased investment in domestic abuse services generally, to provide a consistent and predictable level of service nationally instead of a 'postcode lottery', and the need for effective legal defences for survivors who are driven to offend.

It was a great discussion to be part of, and I recommend having a listen. It is also be a useful resource to share with peers whom you are briefing on the Bill.

Below is the response from Alex Chalk as previously Mentioned

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MoJ ref: ADR81178

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Dear Jenny,

**DOMESTIC ABUSE BILL: LEGAL PROTECTION FOR SURVIVORS OF DOMESTIC ABUSE WHO
OFFEND**

Thank you for your letter of 1 September advising that you will be re-tabling your amendments for a statutory defence during the Lord's stages of the Domestic Abuse Bill. I note that Baroness Kennedy QC will be tabling the amendments on your behalf.

As the Government has already stated, whilst we recognise the fact that many women offenders have themselves been subject to domestic abuse and the crime they committed may well have been a result of their involvement in an abuse relationship, the Government remains unpersuaded that a statutory defence is necessary, given the existing full and partial defences available under the current law. These include the full defences of duress and self-defence as well as, in homicide cases, the partial defences of loss of control or diminished responsibility.

The Government needs to ensure fair and equal access to justice. As a result, it needs to balance recognition of the abuse that has been suffered and the impact it has had on the victim, with the need to ensure that people, wherever possible, do not revert to criminal behaviour. The current law reflects and allows for this whilst continuing to evolve and we believe it strikes the right balance between these factors. We also hold the view that the definition to be included in the Domestic Abuse Bill should help to clarify the wide-ranging nature of domestic abuse for all those involved in the criminal justice system.

As was stated at Committee stage of the Domestic Abuse Bill on 17 June, we are aware of concerns, expressed by law enforcement partners and others, that the section 45 statutory defence for victims of modern slavery is possibly being misused. Evidence suggests that some offenders are falsely claiming to be victims of modern slavery to escape justice. This potentially undermines the integrity of the criminal justice system causing resources to be diverted from supporting genuine victims. We therefore have significant concerns about adopting such a model. Additionally, the Ministry of Justice has had no direct evidence from either the judiciary or defence solicitors that the current defences are inoperable and that there is therefore a gap in the law that needs to be filled here. Full defences, including duress and self-defence, are defences to *any* crime which, if pleaded successfully, result in acquittal. Partial defences, such as diminished responsibility and loss of control, reduce a charge from murder to manslaughter. In addition, the fact that an accused is subject to domestic abuse will be considered throughout the criminal justice process from the police investigation to the CPS charging decision to defences under the existing law and as a mitigating factor in sentencing