



Women who kill abusive partners: reviewing the impact of section 55(3) ‘fear of serious violence’ manslaughter – some empirical findings

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ABSTRACT

In October 2010, section 55(3) of the Coroners and Justice Act 2009 came into force, and ‘fear of serious violence’ was expressly included in the statute as a qualifying trigger for ‘loss of self-control’ voluntary manslaughter, a partial defence to murder. This development (albeit that it is a gender-neutral provision) was anticipated to be an important step in recognising the situation of a woman who, in fearing a partner’s violence, control and abuse, kills to preserve her own life. The provision is only operative where ‘fear of serious violence’ and ‘loss of self-control’ can be established, which, given its limitations, prohibits many women in fear of a partner’s violence and coercion from successfully using this defence. The author’s review of the legal reform and the case law, together with 40 homicide cases involving female defendants who killed intimate current or former partners (April 2011–March 2016) demonstrates that this defence, which promised to deliver justice for abused women, has been little used. Women’s vulnerability and fear and response to intimate partner abuse and control is still insufficiently understood and explored and is evident where juries return murder rather than manslaughter verdicts. Further reform is needed to the legal framework regarding this and other defences in order to achieve a just law by incorporating women’s experience of, and defensive response to, violence and control in its many forms.

Key words: intimate partner; abuse; fear; manslaughter; self-defence; homicide; murder; women who kill.

INTRODUCTION

In this article, I review the impact of the statutory developments introduced by the Coroners and Justice Act (CandJA) 2009, sections 54–56, which have reformed the voluntary manslaughter (formerly ‘provocation’) defence. I examine, first, the limitations and the expansions in law that have been introduced, focusing especially on section 55(3) which recognises the emotion of ‘fear of serious violence’

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as a potential trigger for ‘loss of self-control’ manslaughter. Second, through recent case law decisions, I explore the statutory interpretation of these provisions including the meaning and application of ‘fear of serious violence’ (section 55(3)) and the consequences of the retention of the requirement of ‘loss of self-control’, especially for women who, in fear of abusive partners, kill. Third, through a consideration of published statistics and unpublished Home Office data on partner homicide over a five-year period, April 2011 to year ending March 2016,¹ I offer a provisional assessment of the impact of section 55(3) *CandJA*. In my concluding remarks on the impact of section 55(3) manslaughter, I call for an amendment to existing legislation to remove the ‘serious violence’ and ‘loss of self-control’ requirements, the former setting a high bar informed by an equality of arms precept, the latter cognitively twinned with what men have been permitted to do in anger, both of which undermine the accessibility of this provision for women who, in fear of abusive partners, kill. I also call for law reform across criminal law defences of self-defence and the ‘householder defence’ and duress, both of which are legal constructs historically drawing on notions of male proportionality (the householder defence accommodating some concessions) to accommodate an understanding of women’s physical, mental and financial vulnerability when faced with violence and coercion from intimate partners.²

The *CandJA* introduced important changes to the law, reforming voluntary manslaughter and abolishing the common law defence of ‘provocation’ which, as a partial defence to murder, recognised that an ordinary man (person) when provoked by ‘thing(s) said or done’ could ‘lose self-control’ and kill. This common law defence was given statutory force in the 1957 Homicide Act (HA), section 2:

Where on a charge of murder there is evidence on which the jury can find that the person charged was provoked (whether by things done or by things said or by both together) to lose his self-control, the question whether the provocation was enough to make a reasonable man do as he did shall be left to be determined by the jury; and in determining that question the jury shall take into account everything both done and said according to the effect which, in their opinion, it would have on a reasonable man.

1 For this part of the study, permission was granted by the Home Office. This is part of a larger and ongoing study, and I am grateful to the Home Office Analysis and Insight Department, London, for access to data. Any details on circumstances and outcomes is derived from information that is in the public domain only.

2 S S M Edwards, ‘Recognising the role of the emotion of fear in offences and defences’ (2019) 83(6) *Journal of Criminal Law* 450–472; N Wake, ‘Battered women, startled householders and psychological self-defence: Anglo-Australian perspectives’ (2013) 77(5) *Journal of Criminal Law* 433–457; J Loveless, ‘Domestic violence, coercion and duress’ [2010] *Criminal Law Review* 93.

This section of the HA was repealed and provocation abolished by section 56 CandJA and replaced with sections 54–56 CandJA. Lord Judge, in *R v Clinton*, said of the former law: ‘Its common law heritage is irrelevant.’³ The court in *R v Gurpinar*⁴ said the defence of ‘loss of control’ is different from provocation and that the development of the criminal law is not assisted by continued reference to the old cases. Lord Diplock, in *DPP v Camplin*,⁵ had said much the same about disregarding the pre-1957 law. But contiguity with the past is not so easily refuted since much of the former legal framework and morphological structure of ‘loss of self-control’ manslaughter, and its ontology and meaning are retained.

In an attempt to address the masculinism within the former ‘provocation’ law, particularly the meaning of ‘loss of self-control’ and the evidence required, the construction of the reasonable man (person) and the circumstances that were considered to provoke, and women’s consequent exclusion, provisions in the CandJA place three limitations on the ‘loss of self-control’ and introduce two expansions. The limitations have been introduced because it was widely considered that a defence of ‘loss of self-control’ (provocation manslaughter) was too easily used by men – the predominant offenders – elevating male excuses for killing female partners to an objective standard.⁶ The first two limitations are placed on the ‘trigger’ and on what circumstances (objective element) can be said to be operative where ‘sexual infidelity’ is expressly excluded from being used as an excuse or justification for the subjective element in ‘loss of self-control’ (section 55(6)(c)). A second limitation on the ‘trigger’ is introduced by the twinned requirement that a ‘thing done or said causing a defendant to lose self-control’ must be of (a) an ‘extremely grave character’ (section 55(4)(a)) and (continuing to appeal to moral indignation) (b) cause the defendant to have a ‘justifiable sense of being seriously wronged’ (section 55(4)(b)), so as to exclude trifling matters from being pleaded and to raise the bar in relation to when killing in anger might be pleaded and/or understandable or excusable.⁷ A third limitation is provided by section 54(6) which requires ‘sufficient evidence’ of ‘loss of self-control’ (the subjective element) to be adduced before, in the opinion of the judge, such a defence can be put before a jury. This departs from the

3 *R v Clinton; R v Parker; R v Evans* [2012] 3 WLR 515, [2012] EWCA Crim 2 [2].

4 *R v Gurpinar; R v Kojo-Smith and another* [2015] 1 WLR 3442.

5 [1978] AC 705.

6 See, for example, J Horder, *Provocation and Responsibility* (Clarendon Press 1992).

7 S Parsons, ‘The loss of control defence—fit for purpose?’ (2015) 79(2) *Journal of Criminal Law* 94–101: ‘It seems that the law now requires something overwhelming for there to be loss of control as a result of anger, anger that is so extreme that defendants can claim lack of mens rea.’ 95.

former position where, under the 1957 Act, a defence of provocation could be put before a jury if there was ‘evidence’⁸ and, following *R v Stewart*,⁹ *R v Rossiter*,¹⁰ *R v Thornton*,¹¹ and *R v Scamp*,¹² evidence ‘however tenuous’ satisfied.

Turning now to the expansions in the law, these were introduced largely to address criticism and to respond to law reform recommendations that found that ‘loss of self-control’ manslaughter/provocation as legally framed precluded many women from successfully using the defence. First, the proximity in time requirement established in *R v Duffy*¹³ (expanded in *R v Ahluwalia*)¹⁴ is removed by section 54(2), so that ‘loss of self-control’ is no longer required to be ‘sudden’¹⁵ upon the provocation (now called the ‘qualifying trigger’) and only to be taken into account provided that there is no evidence of a ‘considered desire for revenge’ (section 54(4)). Removing this requirement is intended to address what Horder identified as ‘the immediacy dilemma’¹⁶ and extends a ‘loss of self-control’ manslaughter defence to those who kill even where there is a period of time elapsing between the circumstances that cause the defendant to lose self-control and the killing. The introduction of this section was primarily intended to accommodate women who in fear of violent partners delayed their self-defensive reaction in order to avoid death or serious harm which would likely follow if they attempted to defend themselves upon the moment. In the *Duffy* case, the court in 1948 considered that her delayed response negated the provocation defence.¹⁷ Second, ‘fear of serious violence’, an emotion that has received little or no recognition within the

8 *Gurpinar* (n 4 above) [6].

9 [1995] 4 All ER 999, where the judge had left provocation to the jury the appeal ground was that he had not given them sufficient direction. Appeal was dismissed.

10 [1994] 2 All ER 752. Where provocation was not put before the jury and the Court of Appeal held it should have been and quashed the conviction for murder.

11 *R v Thornton (No 2)* [1996] 1 WLR 1174. Here the Court of Appeal accepted the criticisms of the trial judge’s direction to the jury on provocation and ordered a retrial.

12 [2010] EWCA Crim 2259. The case at trial was self-defence. The appeal was based on criticism of the judge’s direction to the jury on provocation and the murder conviction was quashed and manslaughter substituted.

13 [1949] 1 All ER 932.

14 [1992] 4 All ER 889.

15 *Coroners and Justice Act 2009, Explanatory Note*, 335.

16 J Horder, ‘Reshaping the subjective element’ (2005) 25 *Oxford Journal of Legal Studies* 127.

17 I say ‘alleged’ because my careful reconstruction of this case discovered that there was little or no time elapsing. See S S M Edwards, ‘Mr Justice Devlin’s legacy: *Duffy* – a battered woman “caught” in time’ [2009] *Criminal Law Review* 851.

criminal law defence framework,¹⁸ is now included as a ‘qualifying trigger’ for ‘loss of self-control’ (section 55(3)), but, as with section 55(4), it requires a consideration of whether self-control is lost and the effect the trigger would have on a reasonable man (person).

STATUTORY INTERPRETATION

Reforming qualifying triggers

The reception and interpretation of the ‘sexual infidelity’ exclusion (section 55 (6) (c)) has been equivocal. When its removal was being debated at the Bill stage, Lord Neill of Bladen said:

[it] is ridiculous and out of line with the way in which people think about human passions. It is the one great terrible event that can happen in a married life and to say that it is to be disregarded ... We will lose the public’s respect if we legislate in this way.¹⁹

Lord Lloyd of Berwick said:

Why should we exclude sexual infidelity from a jury’s consideration? Is Parliament really to say that sexual infidelity can never give rise to a justifiable sense of being seriously wronged? Surely not. That must be a question for the jury.²⁰

Such objections were also reiterated at the report stage.²¹ Some of these arguments are reflected in defence submissions and in case law and mitigation of sentence.²² Baroness Scotland at the Bill stage replied:

We accept that these situations may have a devastating impact on the individuals involved. In this day and age, whatever the views may be about that, we want to put beyond peradventure that this cannot be the basis upon which one should seek to take another’s life.²³

Uncertainty over the ambit of its meaning and application has resulted in several appeals.²⁴ Following the statutory removal of sexual infidelity,

18 Edwards (n 2 above).

19 *Coroners and Justice Bill*, HL Deb 7 July 2009, vol 712, col 577.

20 *Ibid.*

21 *Lords Hansard text for 26 October 2009 (pt 0013)*, parliament.uk, col 1060 per Lord Thomas of Gresford, who said removal of sexual infidelity was ‘outstandingly obnoxious’; col 1061 per Lord Lloyd of Berwick: ‘It is little short of astonishing that Parliament should be asked to tell the jury whether sexual infidelity is enough for a man or woman to lose their self-control.’

22 K Horder and K Fitzgibbon, ‘Where sexual infidelity triggers murder: examining the impact of homicide law reform on judicial attitudes in sentencing’ (2015) 74(2) *Cambridge Law Review* 307–328.

23 HL Deb (n 19 above) col 589.

24 For example, see *R v Otunga (Richard Nyawanda)* [2015] EWCA Crim 2517.

Lord Judge, in *R v Clinton*,²⁵ ruled that in certain circumstances, provided that sexual infidelity was not the sole reason for the killing and was part of a wider context, then it would not necessarily be excluded²⁶ since the provision, he said, was intended to prohibit the misuse of sexual infidelity and not to function as a blanket exclusion.²⁷

Second, the introduction of the twinned tests of ‘extremely grave’ circumstances (albeit the prefix ‘extremely’ is intended to restrict excuses for killing) and ‘justifiable sense of being seriously wronged’ have both proved to be problematic, lacking exactitude, impossible to separate one from the other and saturated with moral judgements, especially through the moral barometer of assessing what is ‘justifiable’. As I made clear in 2004,²⁸ moral indignation or temper should only, if ever, be considered in mitigation of sentence. Lord Lloyd also queried: ‘What is a jury to make of the phrases?’²⁹ ‘This is all nonsense. It is derived from antique law and it has been mangled in the process of producing this Bill.’³⁰

Third, section 54(5)(6) prohibits judges from allowing a defence of ‘loss of self-control’ to go before the jury unless there is ‘sufficient evidence’ of a ‘loss of self-control’. Nowhere is this defined.³¹ Judicial decisions to withhold a defence of ‘loss of self-control’ from the jury have resulted in several appeals, including cases where men have been convicted of murder in circumstances of gang violence and where a defence of self-defence and/or plea to ‘no intent’ involuntary manslaughter has failed³² on the ground that ‘loss of self-control’ resulting from ‘justifiable’ anger (sections 54, 55(4)(a)(b)) or from fear of serious violence (section 55(3)) was wrongly withheld. In *R v Gurpinar*,³³ where the appellant had stabbed and killed a rival, a defence of self-defence and of no intent manslaughter failed. The appellant submitted, as a ground of appeal, that the judge had wrongly withheld from the jury’s consideration the defence of ‘loss of self-control’ because, as counsel submitted:

25 *R v Clinton* (n 3 above).

26 These same arguments constituted the objections to the removal of sexual infidelity during the Commons consideration of the [Lords amendments to the Bill](#): HL Deb 9 November 2009, vol 499, col 80 per Mr Grieve.

27 *R v Clinton* (n 3 above) [35]–[37].

28 S S M Edwards, ‘Abolishing provocation and reframing self-defence – the Law Commission’s options for reform’ [2004] *Criminal Law Review* 181–197.

29 HL Deb (n 19 above) col 578.

30 *Ibid* col 570.

31 [The Crown Court Compendium Part 1: Jury and Trial Management and Summing Up](#) (December 2020) 19–14 [7].

32 For example, *R v Sharp (Brian)* [2015] EWCA Crim 686. Here a conviction for murder was upheld.

33 *Gurpinar* (n 4 above).

There was evidence of loss of self-control both from witnesses and Gurpinar that Gurpinar was either angry or frightened at the time of the fight. Given his anger and his being frightened, there was an inference of 'loss of self-control' to be drawn from the actual fact of a 14 year old boy of good character stabbing another in the chest.³⁴

The Court of Appeal upheld the trial judge's decision to withdraw 'loss of self-control' from the jury and referred to the Explanatory Note to this section which makes clear that the 2009 Act requires a much higher threshold of evidence of 'loss of self-control' before a judge can put the defence to a jury.³⁵ In *R v Kojo Smith*,³⁶ where two groups clashed, Kojo Smith stabbed and killed a member of the rival group. His plea of self-defence failed, and he was convicted of murder. The trial judge's decision to withhold 'loss of self-control' from the jury was also upheld on appeal. On appeal it was submitted by counsel that the judge had wrongly withheld 'loss of self-control'.

It was said that there had been loss of control and that there was a qualifying trigger, for the purposes of the statutory provisions, in the form of fear of serious violence on the part of the deceased towards the appellant, by reference to section 55(3).³⁷

The appeal court reiterated that 'a much more rigorous evaluation'³⁸ by the trial judge before 'loss of self-control' is put to the jury is required.³⁹ In *R v Jovan Martin*,⁴⁰ the appellant stabbed his close friend following a disagreement. His defence of self-defence and no intent manslaughter failed, and 'leading counsel then appearing for the Appellant had made clear to the judge in discussion that loss of control was not being advanced and had expressly agreed that such an issue did not arise on the evidence.'⁴¹ The Court of Appeal upheld the decision of the trial judge to withhold the defence of 'loss of self-control' from the jury and, citing *R v Dawes*,⁴² said 'even serious anger will not often cross the threshold into loss of control'.

Fear of serious violence as a qualifying trigger

Turning to the statutory expansions primarily intended to accommodate women's self-defensive response arising out of fear of abusive and

34 Ibid [53].

35 Ibid [34].

36 Ibid [57].

37 Ibid [21].

38 Ibid [33].

39 See also J Stannard, 'Getting past the judge in cases of loss of control: *R v Goodwin*' (2019) 70(3) Northern Ireland Legal Quarterly (377).

40 [2017] EWCA Crim 1359.

41 Ibid [1].

42 Ibid [49]. See also *R v Dawes*; *R v Hatter*; *R v Bowyer* [2014] 1 WLR 947 [963c].

coercive partners, the provision of section 55(3) has had a limited impact for two reasons. First ‘fear of serious violence’ section 55(3) sets an extremely high bar. As I argued in 2004,⁴³ the requirement of ‘serious violence’, which was originally proposed by the Law Commission,⁴⁴ treats women homicide defendants as if they are men in respect of size and strength such that the victim of violence and abuse is only permitted a lethal response where ‘serious violence’ is feared, whilst by comparison a ‘loss of self-control’ section 55(4)(a) defence requires proof of the more fluid ‘grave circumstances’ amendable to subjective assessment. The requirement of ‘serious violence’ to trigger the fear defence sets a high standard of violence not set for any other qualifying trigger and in so doing mirrors the legal requirement for self-defence perpetuating an incommensurability. Masculinist legal concepts, criticised at the Bill stage, notwithstanding the proclaimed intention to reform the law more comprehensively, have been retained and women added onto a predesigned and marginally unaltered masculinist legal framework,⁴⁵ with a male-centric reasonable man⁴⁶ and legal method.⁴⁷ The ‘fear of serious violence’ provision, then, is incomplete and unfinished.

The second problem lies with leaving the ‘loss of self-control’ requirement at the centre of the defence, which, without definition, as I have previously pointed out, continues in its coupling contiguity with notions of anger and men’s rage and has become a signature for anger and male outburst,⁴⁸ far removed from and incongruous with a fear response. Its retention proves to be an obstacle for women who kill. The Law Commission in 2004 proposed its abolition: it was, said the Commission, ‘a judicially invented concept, that lacked sharpness or a clear foundation in psychology’,⁴⁹ concluding that the retention

43 Edwards (n 28).

44 Law Commission, *Partial Defences to Murder* Final Report (Law Com No 290, 2004).

45 C Smart, *Feminism, and the Power of Law* (Routledge 1989).

46 K Lahey, ‘Reasonable women and the law’ in M Fineman and N S Thomadsen (eds), *At the Boundaries of Law, Feminism and Legal Theory* (Routledge 1991) 3.

47 M J Mossman, ‘Feminism and legal method: the difference it makes’ in Fineman and Thomadsen (n 46 above) 283.

48 S S M Edwards ‘Anger and fear as justifiable preludes for loss of self-control’ (2010) 74(3) *Journal of Criminal Law* 223–241; S S M Edwards, ‘Loss of self-control: when his anger is worth more than her fear’ in A Reed and M Bohlander (eds), *Loss of Control and Diminished Responsibility: Domestic, Comparative and International Perspectives* (Ashgate 2011) 79–96; S S M Edwards, ‘Descent into murder – provocation’s stricture – the prognosis for women who kill men who abuse them’ (2007) 71(4) *Journal of Criminal Law* 342–361.

49 Law Commission (n 44 above) para 3.30.

of the ‘loss of self-control’ remained an obstacle to any reform of provocation.⁵⁰ Mitchell et al pointed out:

Instead of retaining a requirement for ‘loss of self-control’, as is currently construed in the rather unsophisticated sense of overtly physically out of control, the law should look at the extent of the defendant’s emotional disturbance and how far that disrupted the individual’s normal thinking, reasoning and judgment.⁵¹

At the bill stage, Lord Thomas of Gresford acceded that ‘loss of self-control’ aligns with male anger⁵² and is founded on measuring self-control against that of the reasonable man. After the passage of the Act, since ‘loss of self-control’ lacked any statutory definition, Professor David Ormerod made a valiant effort to rescue it from its calcified gendered framing, asserting that, for the purposes of the 2009 Act, ‘loss of self-control’ could be best understood as ‘founded on whether the D has lost his ability to maintain his actions in accordance with considered judgment or whether he had lost normal powers of reasoning’.⁵³ This definition was approved in *R v Jewell*.⁵⁴

Whilst the intention of the fear defence (section 55 (3)) was to concede women’s fear of men’s violence (albeit that it is a gender-neutral provision), men have also attempted to use this defence as in *R v Otunga*⁵⁵ and *R v Goodwin*.⁵⁶ In *R v Otunga*, where the deceased wife had been stabbed 32 times and there was evidence of 29 blows to the body, the court rightly rejected the ground of appeal that submitted that the judge had wrongly withheld loss of self-control/fear from the jury.⁵⁷ Whilst *CandJA*, sections 54–56, were said to extinguish the old law on provocation, like it or not, provocation’s legacy remains embedded in legal reasoning, and arguably jury and judicial understandings of what looks like a ‘loss of self-control’ remain intact. ‘Loss of self-control’ may now be differently articulated around a breakdown in functioning, recognising fear, terror and anxiety (as well as anger), but understanding of its outward appearance remains visibilised by anger. In the House of Lords debate committee stage on the Bill, Baroness Scotland of Asthal expressed her misgivings with the drafting:

50 Ibid para 4.163.

51 B J Mitchell, R D Mackay and W J Brookbanks, ‘Pleading for provoked killers: in defence of Morgan Smith’ (2008) 124 Law Quarterly Review 675.

52 HL Deb (n 19 above) col 572.

53 D Ormerod in *Smith and Hogan’s Criminal Law* 13th edn (Oxford University Press 2011) para 15.1.2.5 and cited by the court in *Gurpinar* (n 4 above) [19].

54 [2014] EWCA Crim 414 [24].

55 *Otunga* (n 24 above).

56 [2018] EWCA Crim 2287.

57 *Otunga* (n 24 above). See also *R v Lodge* [2014] EWCA Crim 446.

The concerns are numerous; for example, that the defence may be too easily accessible to those who kill in anger and not sufficiently accessible to those who kill in fear. Although the courts have developed case law to accommodate this—as the noble and learned Lord has made clear—there is, in reality, no obvious place for killings in fear of serious violence in a defence designed for angry reactions. It is right that there should be a tailored response to these sorts of cases.⁵⁸

Many recognise, however, that the triggers for ‘loss of self-control’, what amounts to ‘loss of self-control’ and when such loss is justifiable are socially constructed excuses and behavioural manifestations respectively, and, as Horder points out, such excuses function to give the individual ‘permission’ to lose control.⁵⁹ So, for example, the typical male excuse for loss of self-control in blaming a female partner’s lack of interest in him or starting a new relationship, once sufficient to morally excuse his killing conduct, at least in law, is no longer an adequate ground. As for the abused and coerced partner, her state of mind and manifestation of conduct at the time of the killing is not characterised by a ‘loss of self-control’ in the traditional masculinist sense at all, nor is she in the period before the killing in a state of anger, instead she is in a state of ‘fearful contemplation’.⁶⁰ Horder,⁶¹ with reference to provocation recognised: ‘The defence of provocation (focused on anger) is ... poorly equipped to deal with those who are driven to act as they do out of despair.’ This remains an omnipresent concern obstructing the accessibility of a fear defence so long as ‘loss of self-control’ is required. According to Mitchell et al, ‘fear ... will probably result in what is overtly less frantic, more deliberate behaviour’.⁶² Additionally, the construct of ‘reasonableness’ requires the jury to consider how a person with a ‘normal degree of tolerance and self-restraint’ (section 54(1)(c)) might have reacted. The terrified woman may not meet the standard of reasonableness demanded, although it is to be noted that in another context an exemption privilege is accorded the male ‘startled householder’ where the law recognises the presence of an intruder as compromising the ability of a (male) householder to weigh to a legal nicety the degree of force required to repel such an attacker (section 43 Crime and Courts Act 2013).

Jury and judicial determinations

As Lord Thomas recognised at the Bill’s committee stage, the law is interpretive and: ‘juries control the situation in a murder trial where

58 HL Deb (n 19 above) col 581.

59 Horder (n 16 above) 127, 128.

60 Edwards, ‘Loss of self-control’ (n 48 above) 88.

61 Horder (n 6 above) 191.

62 Mitchell et al (n 51 above) 683.

the provocation defence is run. They set the standard, and it changes over the years as people's views change.'⁶³ Jurors determine what amounts to 'fear' and to 'serious violence', whether self-control is lost and whether the things done and said are 'extremely grave' and might be considered 'justifiable' to invoke a sense of being 'seriously wronged'. Jurors are likely, in looking for signs of 'loss of self-control', to consider as relevant defendant's descriptions of 'red mist', 'boiling over' and 'snapping',⁶⁴ and less inclined to give weight to emotions of anxiety, despair and fear. Lord Lloyd said that the attempt to include both fear and anger in the same defence has resulted in a

... mishmash, which is bound to confuse the jury, and which will, if I am right, take many years for the courts to elucidate. Since the structure itself is defective, it cannot now be put right by amendment. We must get rid of the clause altogether and think again.'⁶⁵

At both the appellate and sentencing stage, it is judges and the statutory tariffs that 'control the situation'. In *R v Lawrence (Denise)*, following the introduction of the Criminal Justice Act (CJA) 2003 – section 269 and para 6 of schedule 22 – the case was referred to the High Court for the determination of the minimum sentence term. The defendant's daughter made allegations that the deceased, the husband of the defendant and step-father to the defendant's daughters, had sexually abused her and her sister.⁶⁶ The deceased's husband was charged with sexual abuse and subsequently acquitted following a criminal trial. The defendant remained haunted by the allegations and stabbed the deceased (whilst he was tied to the bed, that part being an aspect of the sex they had together) because of her belief that he had abused her daughters. A defence of diminished responsibility (section 2 manslaughter) was rejected by the jury and the judge put provocation to the jury which they also rejected, albeit that questions from the jury to the judge when arriving at their verdict suggested the matter, for them, was not clear cut. A sentence of 12 years was handed down, as a minimum term to serve following her conviction for murder. Richards LJ in the high court (also the trial judge) said:

The case is as close to one of diminished responsibility as it is possible to get without inconsistency with a verdict of murder. The defendant's responsibility was undoubtedly impaired by her abnormality of mind, albeit that the jury did not accept that it was 'substantially' impaired.⁶⁷

63 HL Deb (n 19 above) col 587.

64 Edwards, 'Anger and fear' (n 48 above).

65 HL Deb (n 19 above) col 580 per Lord Lloyd.

66 [2006] EWHC 140 (QB).

67 Ibid [28][i].

Media reports were less sympathetic and preferred to report ‘ex-husband executed by wife’.⁶⁸ This writer understood the extreme and unremitting ‘provocation’ of the alleged acts done by the deceased (albeit unproven to the criminal standard) and the defendant’s desire to prove to her daughters (who had been told by another relative that the defendant did not believe the daughter’s allegations) that she did in fact believe them and loved them.⁶⁹ In *R v Stephanie Elizabeth Williams*,⁷⁰ the defendant was provoked following an argument⁷¹ which arose in a restaurant where the deceased had left the table for over half an hour for the purpose, the defendant believed, to supply another with drugs. When he returned, she tried to leave the restaurant, he stood up to restrain her and she stabbed him once with a steak knife which was on the table. Her defence was self-defence, and the judge also put provocation to the jury. Both defences were rejected by them. On appeal, she submitted fresh evidence of her fear of her partner and evidence of her fearful state (battered woman’s syndrome evidence). The Court of Appeal in dismissing her appeal said:

... it is hard to see how the appellant, even on all the material on which he sought to rely about Lamont’s abusive conduct toward her, could have perceived herself in such danger in the restaurant that she had to stab him with a knife to protect herself.⁷²

The difficulty posed for women in putting forward a defence of self-defence is the proportionality requirement and test of reasonableness. As Wake points out: ‘When an abused woman kills her partner, she will rarely be able to claim self-defence, either because the force used was disproportionate or she is unable to prove that the threat was imminent.’⁷³ There are cases, however, where the abused and controlled woman who kills a partner or former partner has succeeded with a plea of diminished responsibility and occasionally provocation. In *R v Fell (Tara Mary)*,⁷⁴ where there was evidence of continuous violence against the defendant from the deceased, a plea of diminished responsibility was accepted. In *Gardner (Janet Susan)*,⁷⁵ where the appellant had been the victim of violence from the deceased, the jury accepted her defence of provocation. In *R v C (Janet Catherine)*,⁷⁶

68 ‘Ex-husband executed by wife’ (*BBC News*, 16 December 2003); ‘Murdered after kinky sex’ (*Evening Standard*, 16 December 2003).

69 Defending counsel Jane Crowley QC.

70 [2007] EWCA 2264.

71 See also ‘Model jailed for restaurant murder’ (*BBC News*, 22 October 2002).

72 *Williams* (n 70 above) [58].

73 Wake (n 2 above).

74 [2000] 2 Cr App R(S) 464.

75 [1994] 14 Cr App R (S) 14.

76 [2003] EWCA Crim 415. Also reported as *R v Charlton*.

where provocation had been successfully pleaded, a sentence of five years was substituted with a sentence of three-and-a-half years because the deceased was violent and controlling and an aspect of sexual abuse became more prominent as the relationship developed, which was accepted by the judge who described the deceased as a ‘control freak’.⁷⁷

Post CandJA, where women have killed violent partners and been convicted of murder, some convictions have been overturned following fresh evidence of the appellant’s mental state supporting pleas of diminished responsibility rather than pleas of ‘fear of serious violence’ (section 55 (3)). Stacey Hyde stabbed the partner of her friend following his abuse of the friend, and at her trial for murder relied on the defences of self-defence, diminished responsibility and provocation, all of which were rejected by the jury⁷⁸ (27 reported incidents of the deceased’s violence towards his partner were accepted by the prosecution).⁷⁹ In an application for permission to appeal, the main ground of appeal relied on fresh evidence of her mental state which was accepted by the court who subsequently ordered a retrial. At retrial, the jury accepted fresh evidence of attention deficit hyperactivity disorder and her plea of self-defence. Hyde was reported as saying:

She was screaming for me to help her. I came in running and jumped on his back to pull him off her ... Next thing I remember is he is on top of me and he is strangling me – I remember him holding my neck down and the light fading. I was screaming – I know he was going to kill me, he is not stopping – no one was coming to help.⁸⁰

Emma-Jayne Magson⁸¹ killed her partner with a single stab wound following an argument. She said:

... he grabbed me around my throat and pushed me back against the side where the sink is. I couldn’t move or get away ... I thought the assault on me would get worse. I was right next to the sink and reached out to grab something. Due to the way he was holding my throat, I could not see what was in the sink. I picked up the first thing which came to hand, which was a steak knife with a plastic handle. The knife was in my hand, and I hit out once. It happened so quickly I cannot be sure exactly how it happened. I didn’t mean to harm him, I just wanted him to get off me.⁸²

77 Ibid [2].

78 [2014] EWCA Crim 673.

79 Sandra Laville, ‘Stacey Hyde: “There are many more who need their cases re-examined”’ *The Guardian* (London, 11 June 2015).

80 See ‘Stacey Hyde cleared of murder in retrial’ *The Guardian* (London, 21 May 2015).

81 [2018] EWCA Crim 2674. See also Harriet Wistrich’s blog on this case: ‘The Emma-Jayne Magson case: misogyny is alive and well in the criminal justice system’ (*Justice for Women*, 8 April 2021).

82 Ibid EWCA [14].

Convicted of murder, the jury rejected her defence of diminished responsibility. In December 2019, the Court of Appeal ruled her conviction for murder unsafe,⁸³ hearing fresh evidence of her emotionally unstable personality disorder at the time, ordering a retrial. At retrial in March 2021 she was found guilty of murder and sentenced to a 17-year minimum term.⁸⁴ In *R v Challen*,⁸⁵ the defendant hit a controlling and domineering husband 20 times with a hammer. The jury rejected her plea of diminished responsibility and provocation (the latter, which the judge had put to the jury). She was convicted of murder with a minimum sentence term of 22 years, reduced to 18 years on appeal.⁸⁶ On appeal against conviction, Lady Justice Hallett⁸⁷ quashing the conviction and ordering a retrial⁸⁸ accepted that evidence of ‘coercive control’ and fresh evidence of two psychiatric conditions if available at the time of the trial might have resulted in a different outcome. The prosecution subsequently decided not to pursue a retrial as the appellant had already served 10 years in prison.⁸⁹

‘FEAR OF SERIOUS VIOLENCE’ SECTION 55(3): SOME EMPIRICAL FINDINGS

Gender homicide trial outcomes

In exploring further the use and impact of a ‘fear of serious violence’ defence (section 55(3)), I consider some of the empirical evidence which provides an indication of the use of this and other homicide defences and the circumstances where women kill. As the CandJA came into force on 4 October 2010, I have selected as the relevant time frame those cases heard from April 2011. First, referring to published

83 See ‘Emma-Jayne Magson: steak knife murder conviction “unsafe”’ (*BBC News*, 10 December 2019).

84 ‘Emma-Jayne Magson jailed again after murdering boyfriend in row’ (*BBC News*, 29 March 2021).

85 [2019] EWCA Crim 916.

86 *R v Georgina (Sarah Anne Louise) Challen* [2012] 2 Cr App R (S) 20.

87 Lady Justice Hallett the presiding judge in *R v C (GA)* [2013] EWCA Crim 1472, where duress was pleaded said [26]: ‘Learned helplessness would be of particular relevance to a possible defence of duress.’

88 *Challen* (n 86 above). See also V Bettinson, ‘Aligning partial defences to murder with the offence of coercive or controlling behaviour’ (2019) 83(1) *Journal of Criminal Law* 71–86; T Storey, ‘Coercive control: an offence but not a defence *R v Challen* [2019] EWCA Crim 916, Court of Appeal’ (2019)83(6) *Journal of Criminal Law* 513–515.

89 See *Challen* (n 85 above); ‘Sally Challen walks free as court rules out retrial for killing abusive husband’ *The Guardian* (London, 7 June 2017).

generic statistics (data set 1),⁹⁰ I examine all homicides (regardless of relationship of victim to suspect) including murder, diminished responsibility and ‘other’ manslaughter by gender, year ending March 2011 to year ending March 2019. The category ‘other’ manslaughter combines ‘no intent’ or involuntary manslaughter – accident, ‘loss of self-control’ – voluntary manslaughter (sections 54–56) (including cases under section 55 (3) fear manslaughter), and gross negligence manslaughter. This generic grouping makes any definitive assessment of the use of ‘fear of serious violence’ manslaughter impossible.⁹¹ Second, I consider a snapshot of statistics on all ‘domestic homicide’ and court outcomes (data set 2)⁹² for the year ending March 2016 to year ending March 2018. Third, I consider (data set 3)⁹³ convictions of all women (n=40) who killed intimate partners/former partners during the period April 2011 to year ending March 2016 (five years). Permission was sought and granted by the Home Office for access to data set 3, and any information reported on these cases including the circumstances of these homicides and the trial outcomes are derived from information already in the public domain.

Since the 1980s, when I first began to conduct research into homicide between intimate partners/former partners and the method of killing,⁹⁴ between 12 and 21 male partners were killed annually by female partners and between 90 and 110 female partners were killed by male partners.⁹⁵ In the 1980s the killing of female partners by male

90 Data set 1: for year ending March 2011 to year ending 2019, taken from Appendix Tables 21 and 23, [Homicide in England and Wales: year ending March 2019](#) (Office for National Statistics, 25 February 2021). Figures are subject to revision as further information becomes available: [Version 25 February 2021](#).

91 This lack of statistical differentiation was the subject of comment by B J Mitchell and R D Mackay, ‘Investigating involuntary manslaughter: an empirical study of 127 cases’ (2011) 31(1) *Oxford Journal of Legal Studies* 165, fns 14, 18 and 19.

92 Data set 2: ‘[Domestic abuse prevalence and victim characteristics England and Wales](#)’ Appendix Tables 22 and 23 (Office for National Statistics, release date 25 November 2020). As at December 2018, as figures are subject to revision as further information becomes available. See ‘Year ending March 2019 edition of this data set’.

93 Data set 3 is derived from an extract from the Homicide Index supplied by permission of the Home Office and subject to the confidentiality conditions in a Deed of Agreement such that any details of cases included in this or any publication are derived from information already in the public domain, including for example newspapers, web sources, law reporting etc and reference is made to the source used.

94 S Edwards, ‘Gender “justice”? Defending defendants and mitigating sentence’ in S Edwards (ed), *Gender Sex and the Law* (Croom Helm 1985) especially 138–145; S Edwards, *Women on Trial* (Manchester University Press 1984) 175.

95 Criminal Statistics 1988 (Cm 847, HMSO 1988) table 4.4 (b). Note too that at that time statistics were collated on those intimate partners who were or had been living together, and ‘spousal homicide’ was the preferred term.

partners accounted for 40 per cent of all homicides of females.⁹⁶ Bel Mooney's article in *The Times* in 1981: "Has a woman the right to fight back?" No!⁹⁷ summed up the prevailing attitude to women who acted in self-defence.⁹⁷ Women then, as now, predominantly use a knife to kill, accounting for 72 per cent of all female on male partner homicides 1987–1996⁹⁸ and 75 per cent of all female on male partner homicides in 2011–2012.⁹⁹ Since 2009 between 46 and 52 per cent of all females killed are killed by intimate partners.¹⁰⁰

Considering data set 1 (year ending March 2011 to year ending March 2019), approximately 3267¹⁰¹ defendants were convicted of homicide. As a percentage of all homicides, convictions for murder rose from 64 per cent in 2011 to 71 per cent in 2019, continuing an upward trend from 1969 when murder constituted 29 per cent of homicide convictions.¹⁰² Diminished responsibility declined from 5 per cent of all convictions in 2011 to 4 per cent by March 2019 (accounting for 10 defendants).¹⁰³ 'Other' manslaughter accounted for 30 per cent of all convictions for homicide. Disaggregating these figures by gender 2977 males and 278 females were convicted of homicide.¹⁰⁴ Of all males convicted, 1915 (64 per cent) were convicted of murder, 159 (5 per cent) of diminished responsibility and 903 (30 per cent) were convicted of 'other' manslaughter.¹⁰⁵ Of all 278 females convicted, 154 (55 per cent) were convicted of murder, 31 (11 per cent) of diminished responsibility and 93 (33 per cent) were convicted of 'other' manslaughter.¹⁰⁶ Hidden within the generic 'other' manslaughter category are successful section 55(3) fear of serious violence manslaughter defences, and within the murder category are the unsuccessful section 55(3) defences.

96 S S M Edwards, *Policing Domestic Violence* (Sage 1989) 125; Edwards (n 28 above).

97 *The Times* (London, 21 July 1981).

98 S S M Edwards, 'Ascribing intention – the neglected role of modus operandi implications for gender' (1999/2000) CIL 243.

99 See [Focus on Partner/Ex-partner Homicide](#) (Office for National Statistics, 13 February 2014) table 2.1: 'Characteristics of partner/ex-partner homicides for victims aged 16 and over, combined data for 2010/11 to 2012/13'.

100 Data set 2 (but from source at n 92 above) Appendix Table 10b.

101 Data set 1 (n 90 above). Appendix Table 21. Version 25 February 2021.

102 It is significant that the judgment in *R v Nedrick* [1986] 1 WLR 1025, and its tightening of the test of intention for murder with the nomenclature of 'virtual certainty', surprisingly made no impact on reducing the percentage of murder convictions; nor did *R v Woollin* [1999] 1 AC 82 with its requirement to 'find' murder instead as formerly permission to 'infer'.

103 Data set 1 (n 90 above). Appendix Table 21.

104 *Ibid* Appendix Table 21.

105 *Ibid* Appendix Table 23.

106 *Ibid* Appendix Table 23.

‘Domestic homicide’ trial outcomes

Considering the second data set (data set 2), a snapshot of published statistics on ‘domestic homicide’ including partners/former partners, parents, children and other family members (year ending March 2016 to year ending March 2018),¹⁰⁷ show that 216 females and three males were killed by a male intimate partner/former partner, and 40 males and one female killed by a female intimate partner/former partner.¹⁰⁸ Nearly one-third of all domestic homicides perpetrated by males were committed against parents (47), children (3) and other family members (41) (n=91), compared with one quarter (n=14) where females were perpetrators where seven parents and seven other family members were killed. Considering court outcomes in ‘domestic homicides’,¹⁰⁹ 119 male defendants were convicted of murder, 22 of diminished responsibility and 24 of ‘other’ manslaughter (proceedings were not initiated in 62 cases due to the suspect committing suicide in 45 cases, and court decisions were pending in a further 83 cases at the time of publication of these statistics). Regarding female defendants, 14 were convicted of murder, four of diminished responsibility and 10 of ‘other’ manslaughter (proceedings were not initiated in 12 cases and court decisions were pending in 15 cases at the time of publication of these statistics). Since 10 females were convicted of ‘other’ manslaughter (no intent, loss of self-control and gross negligence), it may be reasonably assumed that only a few, or possibly none of these cases, involved convictions for section 55(3) manslaughter in partner/former partner relationships. It is also important in considering this question that the 14 murder convictions are not overlooked since it is possible that a defence of self-defence and/or fear manslaughter and/or no intent manslaughter or diminished responsibility may have been pursued and failed. From this data thus far a picture begins to emerge that section 55(3) is likely little used and when used likely unsuccessful.

Women who kill intimate partners and outcomes

The paramount question in this study is whether the inclusion of fear (section 55(3)) as a trigger for ‘loss of self-control’ is accessible to women who kill. This important question is now pursued through a study of unpublished data held in the Homicide Index (data set 3, for the period April 2011 to year ending March 2016 – five years).¹¹⁰ During this period 40 females were convicted of homicide offences against 39 male intimate partners/former partners and one female

107 Data set 2 (n 92 above) tables 22 and 23.

108 Ibid table 22.

109 Ibid table 23.

110 Data set 3 (n 93 above).

partner. The circumstances and legal outcomes of these cases were tracked through searches of publicly held information.¹¹¹ Of the 40 cases where women were recorded as killing partners/former partners, three were convicted of diminished responsibility, seven were convicted of ‘other’ manslaughter and 30 women were convicted of murder. It is not possible to ascertain the original pleas at trial. Of the three diminished responsibility convictions, one defendant was sentenced to a hospital order,¹¹² where she had stabbed her husband and there had been a history of mental illness and hospitalisation. One defendant was sentenced to a term of seven-and-a-half years’ imprisonment where she had stabbed her husband but was unable to remember what had happened on the night of the killing.¹¹³ One defendant had her original sentence of 12 years’ imprisonment reduced on appeal to six, where she had stabbed the deceased and the appeal court described the relationship as ‘volatile’.¹¹⁴

Of the seven cases where ‘other’ manslaughter was recorded and therefore ‘no intent’ involuntary manslaughter or ‘loss of control’ would have been accepted by the jury following a murder trial, then, from information already available in the public domain, none suggested that the defendants were convicted either for ‘loss of self-control’, ‘things said or done’ (section 55(4)(a)(b)) or ‘fear of serious violence’ (section 55(3)). The sentences handed down by the court reflected the wide-ranging circumstances. In one case the defendant received a fully suspended sentence of imprisonment.¹¹⁵ In one case, an 18-month sentence was suspended for two years, where both partners had made a suicide pact (section 4 HA 1957), the male partner dying and the female partner surviving, and where the court recognised that the defendant was under the control of a ‘domineering husband’.¹¹⁶ In one further case, a sentence of seven years was handed down where the defendant, who had stabbed the deceased following an argument, where there had been a history of violence, could not remember what had happened.¹¹⁷ In one further case, a sentence of nine years was

111 For example, newspaper searches, Gale, thelawpages.com, court information, Lexis and Westlaw searches.

112 See ‘GP Geraint Hughes unlawfully killed by wife in Feock’ (*BBC News*, 15 August 2019).

113 See ‘Marie Gavin admits stabbing partner in Bedford’ (*BBC News*, 14 November 2011).

114 *R v Martin (Ella Marie)* [2014] EWCA Crim 795.

115 See ‘Middleton woman charged with husband’s murder’ (*BBC News*, 17 August 2011). See also *The Law Pages*.

116 See ‘Suicide pact wife avoids prison over husband’s killing’ (*BBC News*, 7 May 2014).

117 See ‘Lemington mum Lisa Palmer jailed for seven years for a killing she can’t remember’ (*Chronicle*, 20 Marcy 2015).

handed down where the parties had separated and the deceased had continued to return to the property where the defendant was living, and during an argument the defendant stabbed the deceased – the defendant said in self-defence.¹¹⁸ In one further case, a sentence of nine years was handed down where the deceased found the defendant with another man and following an argument the defendant stabbed the deceased.¹¹⁹ In one further case, the defendant was an accomplice in an arson attack which was instigated and perpetrated by her current boyfriend who was also the former husband of the deceased (in this case three persons died). The defendant was described by the judge as being ‘a joint perpetrator in a common venture to burn the home’.¹²⁰ Acquitted of murder, she was found guilty of ‘no intent manslaughter’ and received a prison sentence of 14 years minimum. In one further case¹²¹ a 16-year sentence was handed down where the deceased was said to be domineering, controlling and sexually abusive and had forced the defendant into prostitution.

Convicted of murder: the 75 per cent

Of the 30 cases where women were convicted of murder (75 per cent of all women n=40 who killed intimate partners during this period) (including one woman in a same sex relationship who killed her female intimate partner), it is not known in how many of these cases a defence at trial of self-defence, ‘loss of self-control’, ‘things said or done’ (section 55(4)) or ‘fear of serious violence’ (section 55(3)) or diminished responsibility (section 52) were pleaded and failed. In at least four of these 30 convictions the defendant pleaded guilty to murder. In two cases, the circumstances were such that it is curious that a trial was not run since the fatal attack appeared to follow on from an argument where there was evidence of violence from the deceased. However, the sentencing discount of an early guilty plea¹²² may have been persuasive in inducing such a plea.

From the information in the public domain, I have grouped together the murder outcomes depending on the circumstances albeit cognisant that press and media reporting on these cases is prosecution-favoured. A word is required here on the sentencing regime for murder. Section 269

118 See ‘Mother-of-six stabbed “devoted” father of her children to death’ (*Mail Online*, 24 May 2013).

119 See ‘Abingdon river death: girlfriend denies knife murder’ (*BBC News*, 7 April 2015).

120 See ‘Danai Muhammadi jailed for killing family in Chatham fire’ (*BBC News*, 2 July 2021).

121 See ‘Prostitute killed “domineering” pimp boyfriend’ (*Mail Online*, 17 March 2014).

122 See s 144 CJA; *Reduction in Sentence for a Guilty Plea: Definitive Guideline* (Sentencing Council, 1 June 2017).

and schedule 21 of the CJA, which sets out sentence length, sets out the framework for minimum terms or 'starting points' and removes much judicial discretion. Minimum terms must be served in full. Paragraph 11 of schedule 21 sets out further factors, which the sentencing court may take into consideration once a minimum term has been decided, these include aggravating and mitigating factors.¹²³ Mitigatory factors of particular relevance in cases involving abused and coerced women who kill include:

- (a) an intention to cause serious bodily harm rather than to kill ...
- (c) that the offender suffered from any mental disorder or mental disability which (although not falling within section 2(1) of the Homicide Act 1957 (c. 11)), lowered 'his' degree of culpability,
- (d) that the offender was provoked (for example, by prolonged stress) in a way not amounting to a defence of provocation,¹²⁴ ...
- (e) the fact that the offender acted to any extent in self-defence.¹²⁵

In 25 of the 30 convictions for murder a weapon was used, and in 19 of these 30 cases a knife was used to kill, in four cases a blunt instrument, in one case arson and in one shooting. The use of a weapon attracts a longer sentence, and the different defence and sentencing outcomes regarding weapons versus body force has been a continual point of conjecture, concern and injustice, especially where women whose size and strength may require them in order to defend themselves to resort to the use of a weapon to hand.¹²⁶

In one of the five joint-enterprise cases, the defendant was recruited by the current boyfriend who used her to kill his former girlfriend. In the four other joint-enterprise cases the defendant appeared to be the prime suspect who recruited another/others to kill a former boyfriend. Sentences in this category ranged from 20 to 32 years minimum.

In the remaining 25 murder convictions, in at least four cases there was evidence of violence against the defendant, reflected in the defence pleas of self-defence where fear was evident and also in the 'no

123 Para 10: Aggravating factors (additional to those mentioned in paragraph 4(2) and 5(2)) that may be relevant to the offence of murder include (a) a significant degree of planning or premeditation, (b) vulnerability of the victim because of age or disability, (c) mental or physical suffering inflicted on the victim before death, (d) the abuse of a position of trust, (e) the use of duress or threats against another person to facilitate the commission of the offence, (f) the fact that the victim was providing a public service or performing a public duty, and (g) concealment, destruction, or dismemberment of the body.

124 In *R v Bradley John Allardyce, Wayne Barry Turner and Shane Porter* [2006] 1 Cr App R (S) 98 at 587, a sentence of 18 years was reduced to 15 years. See also *R v James King* [2006] 1 Cr App R (S) 121, 715.

125 S 269 and sched 21 of the CJA, para 11.

126 Edwards, 'Descent into murder' (n 48 above).

intent' to kill pleas. The remarks of the sentencing judge acceded the defendant's lack of intent in all these four cases, and in one said: 'It was self-defence turned into an attack.'¹²⁷ Sentences in this group ranged between 12 to 14 years minimum term reflecting mitigatory factors.¹²⁸ In (*R v Cox*) (*Louise Jane*)¹²⁹ a defence of self-defence failed and on appeal the issue was whether bad character evidence had been unfairly admitted potentially impacting on the jury verdict so as to render the conviction for murder unsafe.

[10] The defence case was that the appellant had acted in lawful self-defence after the deceased attacked her, gripped her tightly round the neck and held her against a wall. ... She picked up a knife from the kitchen drawer and returned to the bedroom area ... [16] I believed he was going to come after me and strangle me again and I thought I might die'.

The Court of Appeal upheld her conviction for murder. Fariieissia Martin¹³⁰ received a sentence of 13 years' imprisonment for murder, having defended herself by stabbing her partner having been grabbed by the throat by him. On 16 December 2020, the Court of Appeal quashed the murder conviction¹³¹ and ordered a retrial. At retrial despite evidence of a history of abuse she was sentenced to a prison term of 10 years and nine months.

In at least 10 further cases, published reports indicated that there had been arguments between the parties over matters including finances, drug abuse, children, relationships and, in many cases, against a background of violence.¹³² In most of these cases a single knife wound was inflicted by the defendant. Judges' remarks at the sentencing stage in several cases suggested that they accepted that the defendant lacked an intention to kill.¹³³ Here, sentences ranged from 12 to 15 years. For example, in *R v Hughes* (*Susan Michelle*),¹³⁴ a

127 See 'Margate woman Janice Carter jailed for husband's murder' (*BBC News*, 2 April 2021).

128 See 'Birkenhead woman Cherie Cooper jailed for life for stabbing violent partner through the heart' (*Liverpool Echo*, 12 December 2012).

129 [2014] EWCA Crim 804. See also 'Trowbridge murderer jailed for 14 years after stabbing lover' (*Wiltshire Times*, 17 May 2013).

130 See 'Woman wins first stage in battle to overturn murder conviction' (*The Guardian*, 3 December 2019). See also 'Kyle Farrell murder: Fariieissia Martin jailed for life' (*BBC News*, 9 June 2015); 'Fariieissia Martin, who stabbed her "violent" boyfriend to death, will stand trial again after new evidence emerged' (*ITV News*, 16 December 2020).

131 See Justice for Women, 'Fariieissia Martin'.

132 See, for example, 'Wolverhampton woman jailed for life after stabbing partner through heart in domestic row' (*Birmingham Mail*, 14 May 2014).

133 For example, see 'St Helens mum Amanda O'Shaughnessy sentenced to life in prison for murdering her partner' (*Liverpool Echo*, 6 July 2015).

134 [2015] EWCA Crim 2514.

defence of loss of self-control and diminished responsibility failed; her case was that she had been the victim of abuse over a long period.¹³⁵ On appeal the grounds of appeal failed, and the conviction was upheld.

In three further cases, where the defendants did not want the relationship to end and where their partners had formed new relationships, in two of these cases, the judge accepted a lack of intent to kill, which was reflected in the sentencing remarks and sentences of 13 and 14 years minimum was handed down.¹³⁶ In the third case, where the deceased had ended the relationship, the defendant used a shotgun to kill and entered a guilty plea to murder. In this case, the court imposed a minimum sentence of 24 years since the sentencing powers of the judge are determined by a mandatory starting point of 30 years for killing with a firearm.¹³⁷ Horder and Fitzgibbon¹³⁸ have explored sentencing outcomes where men have killed partners in which circumstances of sexual infidelity have been said by the defendant to trigger the killing. They contend that post-2009 ‘sexual infidelity-related evidence should have no bearing on mitigation in murder cases by virtue of the application of s. 55(6)(c), except in so far as it is part and parcel of a—necessarily rare—claim of “prolonged stress” bordering on mental disorder’.¹³⁹ However Lord Judge LCJ in *Attorney General’s Reference (No 23 of 2011)*, said:

[55(6)(c)] is concerned with the substantive criminal offence of murder, not with the determination of the minimum term where murder is admitted or proved. Paragraph 11 of Schedule 21 remains in force. ... provocation may provide relevant mitigation to murder [and] mitigation for an offence of murder [is] not closed as a result of section 55 of the 2009 Act.¹⁴⁰

In a further seven cases, from information in the public domain the defendant appeared to be the aggressor, and in most of these cases the killing involved a sustained assault causing several injuries to the deceased. Sentencing reflected these aggravated circumstances and defendants received minimum terms of 15 to 20 years. In one of these seven cases where a sentence of 15 years was handed down the defendant had serious mental health issues which appear to have been insufficiently explored¹⁴¹ which suggests that a diminished

135 Ibid [8].

136 See ‘Glamour model stabbed her boyfriend to death when he sent text saying: “It’s over”’ (*The Mirror*, 21 September 2016).

137 See ‘Stratton Strawless murder: Catherine Hodges jailed for 24 years’ (*BBC News*, 26 August 2011).

138 Horder and Fitzgibbon (n 22 above).

139 Ibid 326.

140 [2012] 1 Cr App R(S) 45, 268.

141 See ‘Michelle Mills jailed for Edward Miller’s murder in Scalford’ (*BBC News*, 30 April 2013).

responsibility plea may have been more appropriate. In one of these seven cases the defendant appealed the sentence term of 20 years which was dismissed.¹⁴²

In one further case (*R v Sampford*),¹⁴³ an elderly defendant, who was caring for her elderly sick and terminally ill husband, snapped. She pleaded guilty to murder and appealed the sentence length of nine years. Refusing permission to appeal, the single judge said: 'This is clearly a tragic case that has caused me to review the papers with considerable anxiety.' Following a renewed appeal application a sentence of nine years was upheld.¹⁴⁴

Notwithstanding these imperfect findings and analysis an indication is nonetheless very strongly suggested of the little impact of section 55(3) CandJA in cases where the defendant is so clearly the victim of violence and where violence has characterised the relationship. A substantive study by the Centre for Women's Justice¹⁴⁵ 'Women who kill', which explored the presence of prior violence and coercion against women from the deceased, examined 92 cases of women who had killed partners in the period April 2008 to November 2020 and found that in 77 per cent of cases (n=71) women had experienced violence or abuse from the deceased. In the 92 cases, 43 per cent (n=40) were convicted of murder, 46 per cent of manslaughter and 7 per cent (n= 6) were acquitted. This author's study on which this article is based further endorses their findings.

FINAL REFLECTIONS

Several tentative conclusions can be drawn from this compiled picture of the operation of section 55(3) 'fear of serious violence' manslaughter. The 'loss of self-control' requirement in sections 55–56 CandJA still leaves relatively intact the pre-2009 formulation, notwithstanding that judicial guidance asserts that 'loss of self-control' within the CandJA is different to the loss of control in provocation that preceded it¹⁴⁶ and that the trigger for sexual infidelity is excluded and circumstances of the trigger must be grave. With regard to the fear provision, the

142 *R v Edwards (Sharon)* [2017] EWCA Crim 2101.

143 [2014] EWCA Crim 1560 [17].

144 See s 269 and sched 21 of the CJA, para 11. Mitigating factors that may be relevant to the offence of murder included, in this particular case, (f) a belief by the offender that the murder was an act of mercy and (g) the age of the offender.

145 See Centre for Women's Justice, 'Women who kill'. The methodology involved 20 case studies following interviews with women who had killed abusive partners, court transcripts, interviews with counsel and legal practitioners and a study of domestic homicide reviews.

146 Crown Court Compendium (n 31 above 19-10 [3]).

trigger specifies ‘serious violence’ as the requisite threshold before a fear manslaughter defence can be considered. This undermines much understanding of how an abused, coerced and controlled woman (person) in anticipation of such abuse might react and ignores any understanding of coercion and also that an abused/controlled woman’s reaction to the abuser’s violence/threats and coercion does not necessarily follow on from the severity of the last act of violence or threat but from a perception of the severity of the threat of control or abuse.¹⁴⁷ These understandings of an abused person’s fear of further coercive control and violence need to inform and be conceded across the framework of legal defences. Since self-defence is founded on an ancient formulation of combat between two males equal in physical stature and overlaid with a masculinist notion of proportionality, in very few cases where women kill abusive and violent male partners with a weapon is a defence of self-defence successful, even less attempted in such circumstances. Elizabeth Hart-Browne,¹⁴⁸ who was hit and grabbed by the throat by the deceased and picked up a kitchen knife and stabbed him, provides one of the few cases where fear of a partner’s violence resulted in a successful self-defence pleading. Reasonable force continues to remain elided with a notion of male proportionality, such that leaving jurors to determine what is a reasonable response of an abused woman depends on their appreciation and understanding of the situation of a woman who is abused, coerced and controlled. In fact, where women have been subject to violence and control from male partners it is often considered within a diminished responsibility appeal as in *R v Hyde*,¹⁴⁹ and *R v Challen*¹⁵⁰ (and *R v Magson*,¹⁵¹ although on retrial the jury convicted of murder). There has been much publicity and optimism surrounding the ‘fear of serious violence’ section 55(3) defence. As Laird points out in the decision in *R v Challen*:¹⁵²

The judgment in this case was welcomed, as it was assumed that it heralded a sea-change in how coercive control is recognised by the law. This is far from clear, however, as it remains to be seen whether evidence of the kind that led the Court of Appeal to quash the appellant’s conviction would be relevant to a jury’s consideration of loss of control.

147 Edwards, ‘Anger and fear’ (n 48 above) 233. See also *Osland v R* [2000] 2 LRC 486 [57].

148 ‘Elizabeth Hart-Browne cleared of murdering boyfriend’ (*BBC News*, 27 April 2017). She pleaded self-defence and loss of self-control/fear (s 55(3)). She was acquitted. Defending counsel James Scobie QC.

149 [2014] EWCA Crim 673.

150 *Challen* (n 85 above).

151 *Magson* (n 81 above).

152 *Challen* (n 85 above).

If it transpires that it is only relevant to diminished responsibility, then the law has not come very far despite the 2009 reforms.¹⁵³

As the ‘Women who kill’¹⁵⁴ study found, the problem lies not only with legal constructs as currently framed but also with the preparedness of counsel to explore the history of violence and coercion and the mental health of the defendant. McPherson also found in her Scottish study of women who kill violent abusers that the mental health of defendants was insufficiently explored and understood.¹⁵⁵ The 40 conviction outcomes (data set 3) strongly indicate that ‘loss of self-control’ section 55(3) is little used. Pleas of ‘no intent’ manslaughter, it is suggested, also fail, and that may be because circumstances are insufficiently explored, because of jury attitudes or bias and because women use a weapon and not body force. Amendments proposed during the passage of the Domestic Abuse Bill 2020–21 pressed for reform to the ‘householder defence’ to acknowledge the predicament of women in a situation of violence and coercion in their own home.¹⁵⁶ Clause 33,¹⁵⁷ proposed by Peter Kyle MP, if passed would have provided domestic abuse survivors with the same legal protection that householders have in cases of self-defence. As Wake pointed out, ‘The ‘startled householder’ provision places a premium on home invasion cases and ignores other equally deserving defendants.’¹⁵⁸ Clause 46,¹⁵⁹ proposed by Jess Phillips MP, was intended to provide a defence of ‘compulsion’ for victims of domestic abuse who commit any criminal offence, but unsupported by the Government both motions were withdrawn.¹⁶⁰ On 10 March 2021,¹⁶¹ Baroness Kennedy of the Shaws moved two amendments: Amendment 50 to introduce ‘Reasonable force in domestic abuse cases to include domestic abuse in the householder defence’ and Amendment 51 – ‘Defence for victims of domestic abuse who commit an offence under compulsion’ – intended to reform current strictures of duress. Both motions were rejected.¹⁶²

153 K Laird, ‘Homicide *R v Challen* (cases and comment)’ [2019] 11 Criminal Law Review 980, 982.

154 Centre for Women’s Justice (n 145 above).

155 See also R McPherson, ‘Battered woman syndrome, diminished responsibility and women who kill: insights from Scottish case law’ (2019) 83(5) Journal of Criminal Law 381.

156 Public Bill Committees, Domestic Abuse Bill, Twelfth Session, 17 June 2020, col 437.

157 Ibid col 437.

158 Wake (n 2 above). See also A Carline and P Eastale, *Shades of Grey* (Routledge 2014) 134.

159 Public Bill Committees (n 156 above) col 462.

160 Ibid col 440 and col 473 respectively.

161 See Domestic Abuse Bill, Report (2nd Day) HL 10 March 2021, col 1741.

162 Ibid col 1753.

What is required, as has been recognised by many academics for several decades, by the Law Commission for two decades, and now by politicians, is that a root-and-branch reform of law beyond the *ad hoc* appendage approach is required. Criado Perez's commentary on 'invisible data'¹⁶³ makes some very relevant general observations on data collection which are of particular relevance here, where the collation and recording of homicide statistics on trial outcomes continues to obfuscate any transparency on the operation of homicide defences, especially both voluntary and involuntary manslaughter, and, in this instant case, the section 55(3) 'fear of serious violence' defence is subsumed within the generic 'other' manslaughter category which also includes accident 'no intent' manslaughter, 'loss of self-control' (section 55(4)) and gross negligence manslaughter. It is difficult to comprehend how the Government and the legislature can be held to account when there is no transparency with regard to the use of these very disparate defences and where administrative convenience seems the more important. In 1986, I wrote an article entitled, 'The real risks of violence behind closed doors'¹⁶⁴ in which I spoke of the home as the least safe place for women. Today this remains the case in fact and in law both for women who die at the hands of men and for women who defend themselves against them.

163 C Criado Perez, *Invisible Women: Exposing Data Bias in a World Designed for Men* (Vintage 2020).

164 S Edwards, 'The real risks of violence behind closed doors' *New Law Journal* (12 December 1986) 1191–1193.