Law Commission

Reforming the law

Homicide law:

Call for Evidence

14 August 2025

This publication is available at https://lawcom.gov.uk/project/law-of-homicide/

Any enquiries regarding this publication should be sent to us at homicide@lawcommission.gov.uk

Table of Contents

Chapter 1: Introduction

THE PROJECT

1.1 The Law Commission has been asked by the Ministry of Justice to review the law relating to homicide offences,[1] including partial defences to murder and full defences,[2] and the sentencing framework for murder.

CALL FOR EVIDENCE

1.2 In this Call for Evidence, we outline the issues that we are considering as part of this review. We invite evidence from stakeholders to inform the first stage of this project, which is to identify topics that require consideration, and the issues with the current law. At this stage, we have not reached any provisional policy positions on the issues included in the review, nor do we set out any consultation questions. Following this Call for Evidence, we will develop provisional proposals for reform. We will then publish one or more consultation papers, in which we will explain our policy positions and any provisional proposals and ask for consultees' views as part of our consultation process.

1.3 We have started preliminary research on multiple aspects of homicide law for this project. We append a list of references so stakeholders can see the evidence and material of which we are aware.

We welcome responses to this Call for Evidence by 31 October 2025 to homicide@lawcommission.gov.uk.

We ask stakeholders to indicate the issue number to which their response relates.

1.4 We also invite stakeholders to tell us if they believe or have evidence or data to suggest that the law of homicide does or could result in advantages or disadvantages to certain groups or those with certain characteristics (with particular attention to age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation).[3]

---

1 We note that, while the term "homicide" is generally understood as the killing of a person, in criminal law homicide is a broader term which encompasses different offences of causing death (including murder and manslaughter). We explain the differences between the main homicide offences below from para 2.4.

2 A defence is "partial" because, when successful, the defendant will be convicted of manslaughter instead of murder. A defence is "full" because, when successful, the defendant will be found not guilty. We explain the differences between defences below from para 3.2.

3 We refer throughout this Call for Evidence to some issues in the law of homicide that might have an impact on certain groups or individuals with certain characteristics, for example in relation to joint enterprise liability (from para 2.59 to 2.61), "mercy" and consensual killings (from para 2.72), infanticide (from para 2.87), homicide in domestic abuse cases (from para 3.74) and sentencing for murder (from para 4.1). However, we recognise that other issues identified in this Call for Evidence might affect certain groups or individuals with certain characteristics and therefore we welcome relevant evidence or data on any issue.

ORIGINS OF THE PROJECT

1.5 The law of homicide was subject to a thorough review by the Law Commission in the early 2000s. First, we published recommendations for reform of partial defences to murder in 2004.[4] Secondly, we published recommendations for the reform of homicide law in our 2006 report on murder, manslaughter and infanticide ("2006 Report").[5]

1.6 Our recommendations on the reform of partial defences to murder were implemented for the most part in the Coroners and Justice Act 2009, which replaced the partial defence of provocation with that of loss of control and reformulated the requirements of the partial defence of diminished responsibility.[6] The Government decided not to implement our recommendations on substantive homicide offences, explaining that "the time [was] not right to take forward such a substantial reform of our criminal law".[7]

1.7 In the almost twenty years since those recommendations, the existing problems we identified with the way homicide offences work have remained largely unchanged. In our 2006 Report we described the law governing homicide as a

> rickety structure set upon shaky foundations. Some of its rules have remained unaltered since the seventeenth century, even though it has long been acknowledged that they are in dire need of reform. Other rules are of uncertain content, often because they have been constantly changed to the point that they can no longer be stated with any certainty or clarity.[8]

1.8 As society and the law has moved on, the emergence of new problems and some legislative developments have exposed additional limitations with the existing law. These include the operation of the law of joint enterprise and of the reformed partial defences to murder, as well as the extent to which the law reflects a modern understanding of the effects of domestic abuse.

1.9 In December 2024 the Ministry of Justice asked us to revisit homicide law.[9] As part of this new review of homicide law, we have agreed to reconsider and update our 2006 recommendations, to consider full defences and partial defences to murder, especially now that the 2009 reforms have had time to bed down, and to conduct a complete review of the sentencing framework for murder.[10]

---

4 Partial Defences to Murder (2004) Law Com No 290.

5 Murder, Manslaughter and Infanticide (2006) Law Com No 304.

6 We discuss partial defences to murder in detail from para 3.2 below. For a more detailed discussion of the interaction between the 2004 and the 2006 recommendations, see in particular para 3.4.

7 Ministry of Justice, *Report on the implementation of Law Commission proposals* (January 2011) HC 719 para 54.

8 Murder, Manslaughter and Infanticide (2006) Law Com No 304, para 1.8.

9 Ministry of Justice, Domestic killers face tougher sentences in latest move to halve violence against women and girls, Press release (6 December 2024).

10 The Terms of Reference of the project are available here.

Defences to homicide for victims of domestic abuse who kill their abusers

1.10 As part of its response to Clare Wade KC's 2023 Domestic Homicide Sentencing Review, the Government asked the Law Commission to review the use of defences in domestic homicide cases.[11] Despite reform to partial defences to murder, described above, intended also to recognise the context in which a victim of domestic abuse kills their abusers, there remain questions about whether the operation of these defences in this context, from police investigation to trial, achieves just outcomes. In the last twenty years, a number of high-profile cases have highlighted ongoing concerns about the way the law operates for victims of domestic abuse who kill their abusers.[12]

1.11 In May 2024 we launched our review of defences for victims of domestic abuse who kill their abusers.[13] In December 2024, we published a background paper which summarised the modern understandings of domestic abuse and how they relate to cases where victims of abuse kill their abusers.[14] That review has now been merged into the wider homicide review. This will allow us to consider more holistically how homicide law operates when a victim of domestic abuse kills their abuser. We will continue our work on defences for victims of domestic abuse who kill their abusers within the umbrella of this wider homicide project and consider also homicide offences and sentencing for this group of defendants. We discuss these issues in detail from paragraph 3.74.

OVERVIEW OF THE PROJECT

What is included in the homicide review

1.12 Our project is composed of three strands: homicide offences, full and partial defences, and the sentencing framework for murder. Below we provide an overview of the issues within each strand, which are discussed in more detail in the relevant sections.

Homicide offences

1.13 We will review the various elements of homicide offences, and the relationship between those offences. In order to do so, we will first consider to what extent the Law Commission's 2006 recommendations on murder, manslaughter and infanticide need to be updated and reconsidered.

1.14 In the 2006 Report we recommended replacing the existing two-tier structure, consisting of murder and manslaughter, with a three-tier structure, consisting of first-degree murder, second-degree murder and manslaughter. Involuntary manslaughter was the subject of an earlier review by the Law Commission, however the

---

11 Ministry of Justice, *Government Response to the Independent Review by Clare Wade KC* (July 2023) CP 872. The Wade Review is discussed in detail from para 3.82 to 3.84.

12 For example, Sally Challen's conviction for murder which was overturned in 2019 on appeal (*R v Challen* [2019] EWCA Crim 916, [2019] Criminal Law Review 980) and subsequently a plea of manslaughter accepted. Farieissia Martin's 2015 conviction for murder which was also overturned on appeal in 2020 (*R v Martin* [2020] EWCA Crim 1798) and subsequently a plea of manslaughter accepted.

13 The Terms of Refence of the domestic homicide project are available here.

14 Defences for victims of domestic abuse who kill their abusers, Background Paper (10 December 2024). We discuss the background paper below at para 3.75.

recommendations we made in 1996 were not implemented.[15] In the 2006 Report, we built upon that earlier review to consider the role of manslaughter offences, and their fault elements, within the recommended three-tier structure.[16]

1.15 In addition to recommending a three-tier structure, the 2006 Report contains recommendations regarding other aspects related to the homicide offences. This includes reforming the definition of mental elements, complicity, "mercy" and consensual killings, and infanticide.[17] These also form part of our current review, in so far as we are now asked to reconsider and update our 2006 recommendations. We discuss these issues in the relevant sections below and invite evidence.

Defences

1.16 We will also review partial defences to murder and full defences (as relevant to homicide offences). This will include, but is not limited to:

(1) consideration of the role of the defence of duress;

(2) a review of the operation of the partial defences of loss of control and diminished responsibility, following their reform by the Coroners and Justice Act 2009; and

(3) consideration of defences for victims of domestic abuse who kill their abusers.

1.17 In 2006, we considered how partial defences should operate within our recommended three-tier structure. We also looked at the defence of duress and recommended that it should be available as a defence to murder. We did not review other full defences, such as self-defence and necessity, instead suggesting that they merited a separate review.[18]

1.18 We will now consider which of the full defences necessitate review within the scope of this new homicide project. We discuss partial and full defences in detail in Chapter 3 and invite evidence.

Sentencing framework for murder

1.19 We will consider the sentencing framework for murder. The sentencing framework for murder is distinct. Murder is the only offence which carries a mandatory life sentence, and it is the only offence for which the sentencing framework is in legislation under the remit of Parliament, and not in sentencing guidelines under the remit of the

---

15 Involuntary Manslaughter (1996) Law Com No 237. Our recommendations were implemented only with respect to the introduction of the offence of corporate manslaughter in the Corporate Manslaughter and Corporate Homicide Act 2007. The recommendations regarding "reckless killing" and "killing by gross negligence" were superseded by the recommendations made in the 2006 Report on homicide: see Annual Report 2006-07 (2007) Law Com No 306, para 3.12. The law of involuntary manslaughter was also reviewed by the Government: see Home Office, *Reforming the Law on Involuntary Manslaughter: The Government's Proposals* (May 2000).

16 Murder, Manslaughter and Infanticide (2006) Law Com No 304, paras 1.38 and 2.161.

17 We also made recommendations on duress in the 2006 Report, which are discussed in the defences strand from para 3.55 to 3.59.

18 See discussion below at para 3.49.

independent Sentencing Council.[19] The judge's role following a conviction for murder is to set the minimum term an offender must serve before they can be considered for release. The legislative framework for the determination of the minimum term is primarily contained within Schedule 21 to the Sentencing Code. We discuss the sentencing framework for murder in detail in Chapter 4.

1.20 The Ministry of Justice recently commissioned a separate, independent Sentencing Review, chaired by the Rt Hon David Gauke. The Terms of Reference for that review state:

> There are some important areas which we consider are best placed to be progressed outside of the review. The review will not consider wholesale reform of the murder sentencing framework. Whilst the review may consider the impact of sentencing for murder on the wider sentencing framework, the department is considering wholesale reform of homicide law and sentencing separately.[20]

1.21 The Sentencing Review submitted two reports to the Lord Chancellor in February and May 2025.[21] Our review will take account of the findings made in the reports in so far as they are relevant to homicide law. We discuss these findings from para 4.30.

What is excluded from the homicide review

1.22 As explained in the Terms of Reference, we have agreed with the Ministry of Justice that some issues are not appropriate to address as part of this review.

1.23 First, the review will only consider the areas of euthanasia and involvement in suicide inasmuch as they form part of the law of homicide, not the issues associated with their possible legalisation and regulation.[22] The review will also not consider offences relating to the causing of harm to a fetus.

1.24 Secondly, this review will not make recommendations for changes to sentencing guidelines, which are the preserve of the Sentencing Council. However, we recognise that any recommendations we make may have consequences for the relevant sentencing guidelines, if those recommendations are implemented.

1.25 Thirdly, this review will assume the continuing existence of the mandatory life sentence for murder (or the most serious form of murder if a tiered structure for the offences is recommended), and that the sentencing framework for murder will continue to be set out in primary legislation.

---

19 The Sentencing Council was established by the Coroners and Justice Act 2009 to prepare sentencing guidelines. It replaced the Sentencing Advisory Panel and the Sentencing Guidelines Council. Courts must follow the sentencing guidelines, unless it would be contrary to the interests of justice to do so: see Sentencing Code, s 59(1).

20 The Terms of Reference are available here.

21 Independent Sentencing Review. History and Trends in Sentencing (February 2025); Independent Sentencing Review. Final Report and Proposals for Reform (May 2025).

22 See the discussion below from para 2.72 in relation to "mercy" and consensual killings.

STRUCTURE OF THE CALL FOR EVIDENCE

1.26 The Call for Evidence mirrors the provisional structure of our project and therefore is divided into three strands: homicide offences, defences, and sentencing framework for murder.

1.27 For each issue that we identify within the three strands, we give an overview of the existing law, explain our 2006 recommendations (if the issue was already included in our previous review), and provide a summary of the commentary on the recommendations and on the current law, especially in light of the developments that have occurred since 2006. When relevant, we also provide an overview of the challenges raised by the old law to explain the purpose of recent legislative reform in some areas.

1.28 Regarding the commentary on our 2006 recommendations, for the purposes of this document we primarily focus on some of the criticism and challenges identified by commentators in published work since the publication of our 2006 Report. We do not provide an exhaustive account of all the available commentary on our 2006 recommendations. Indeed, one of the aims of this Call for Evidence is to gather additional evidence regarding these recommendations. A detailed discussion of the positions of consultees who provided responses to our previous review, both in favour of and against our recommended reform of homicide law, can be found in the 2005 consultation paper[23] and the 2006 final report.

ACKNOWLEDGEMENTS

1.29 The Commissioners would like to record their thanks to the following members of staff who worked on this Call for Evidence: David Connolly (team manager), Roseanna Peck (senior team lawyer), Dr Andrea Preziosi (team lawyer), Grace Bowland and Abigail Pope (research assistants).

[23] A New Homicide Act for England and Wales? (2005) Law Commission Consultation Paper No 177. The consultation paper contains consultees' views on our provisional proposals, some of which differ from the final recommendations contained in the 2006 Report.

Chapter 2: Homicide offences

INTRODUCTION

2.1 The first strand of our review is concerned with substantive homicide offences. Issues that are included in this strand are: the substance and structure of homicide offences, the definition of fault elements, complicity in murder, "mercy" and consensual killings, and infanticide.

2.2 These are issues which were included in our previous review of homicide and are now within the scope of our current review, since we have been asked to reconsider and update our 2006 recommendations. This does not mean, however, that the current review is limited to issues identified in our previous review. We will also consider whether any additional issues relevant to substantive homicide offences should form part of this review. We invite evidence on this at paragraph 2.104 below.

2.3 We recognise that some of the issues discussed in the defences and sentencing strands cannot always be separated from discussion of the substantive homicide offences.[1] However, we keep the strands separate in this document and, when relevant, highlight the areas of overlap between the strands in the appropriate sections.

STRUCTURE OF HOMICIDE OFFENCES

The existing law

2.4 There are currently two general homicide offences in England and Wales: murder and manslaughter.[2]

2.5 Murder is committed when a person (the defendant, or "D") unlawfully kills another person (the victim, or "V") with the intention either to kill V or to cause grievous bodily harm to V. Murder carries a mandatory life sentence.

2.6 Manslaughter, which carries a discretionary life sentence, can be committed in one of the following ways:[3]

---

1 For example, as we discuss below, partial defences may affect the structure of homicide offences. Similarly, the structure of homicide offences may affect sentencing. Our review of homicide law in relation to victims of domestic abuse who kill their abusers cuts across the three strands, as we also discuss below.

2 There are other specific homicide offences, such as infanticide and causing death by dangerous driving. Infanticide falls explicitly within our Terms of Reference (and within the Terms of Reference of the previous review) and is discussed below from para 2.87.

3 The classification is not uncontroversial, since manslaughter by recklessness and by gross negligence are sometimes believed to form one single category with different fault requirements: see Murder, Manslaughter and Infanticide (2006) Law Com No 304, p 4. For the purpose of this Call for Evidence, we will use the classification followed by the 2006 Report.

(1) killing by conduct or omission that D knew involved a risk of causing death or serious harm ("reckless manslaughter");

(2) killing by conduct or omission that was in all the circumstances grossly negligent given the risk of death ("gross negligence manslaughter");

(3) killing by conduct[4] which constituted an unlawful act involving a danger of some harm ("unlawful act manslaughter");

(4) killing with the intent required for an offence of murder but where a partial defence applies, namely loss of control, diminished responsibility or killing pursuant to a suicide pact.

Manslaughter falling under (1) to (3) is commonly referred to as "involuntary manslaughter", while the term "voluntary manslaughter" is commonly used to refer to (4).

2.7 The 2006 Report explained the problems with this two-tier structure of homicide offences, which can be summarised as follows:[5]

(1) murder is both too narrow and too wide: under the current law, a defendant is liable for murder not only when they intended to kill, but also when they intended to cause serious harm, without foresight of death as a possible result. However, there is arguably a moral difference between a defendant who intended to cause death and succeeded, and a defendant who intended to cause harm, albeit serious, which resulted in the victim's death. This moral difference is not adequately reflected in the current law, which groups the two fault elements together under the label of "murder". At the same time, there is conduct currently captured by the offence of (reckless) manslaughter which arguably should not be labelled "manslaughter", despite being less serious than similar conduct where a defendant intended to kill;

(2) manslaughter is too wide: where murder is too narrow, for the reason explained above, manslaughter is correspondingly too wide, since the offence encompasses conduct whose fault elements differ greatly, arguably reflecting different degrees of blameworthiness. This is evident, for example, in light of the distinction between voluntary and involuntary manslaughter: in the former, the defendant did not intend to kill, while in the latter the defendant intended to kill, but successfully raised a partial defence.

2.8 There are other problems with the current law of homicide which we summarise separately in the relevant sections below.

---

4 The Court of Appeal has held that unlawful act manslaughter cannot arise from an omission: *R v Lowe* [1973] QB 702. If a case involves an omission, in practice the prosecution can instead charge gross negligence manslaughter (provided that D owed a duty of care to V).

5 Murder, Manslaughter and Infanticide (2006) Law Com No 304, paras 1.15 to 1.31.

The 2006 Report

2.9 In 2006, we recommended that the existing two-tier structure be replaced with a three-tier structure. We argued that this would more adequately reflect the offences' degrees of seriousness and confine the mandatory life sentence to the most serious kinds of killings.[6]

2.10 Our recommended structure in the 2006 Report was as follows:

(1) **First-degree murder** (mandatory life sentence)

(a) Killing intentionally.

(b) Killing where the offender intended to cause serious injury and was aware that there was a serious risk of causing death.

(2) **Second-degree murder** (maximum sentence of life imprisonment (discretionary))

(a) Killing where the offender intended to cause serious injury.

(b) Killing where the offender intended to cause some injury or a fear or risk of injury, and was aware of a serious risk of causing death.

(c) Killing in which there is a partial defence to what would otherwise be first-degree murder.

(3) **Manslaughter** (maximum sentence of life imprisonment (discretionary))

(a) Killing through gross negligence as to a risk of causing death.

(b) Killing through a criminal act:

(i) intended to cause injury; or

(ii) where there was an awareness that the act involved a serious risk of causing injury.

(c) Participating in a joint criminal venture in the course of which another participant commits first or second-degree murder, in circumstances where it should have been obvious that first or second-degree murder might be committed by another participant.

2.11 Under our recommended structure, the partial defences of provocation (now loss of control) and diminished responsibility would have reduced first-degree murder to

---

6 Murder, Manslaughter and Infanticide (2006) Law Com No 304, paras 1.64 to 1.67.

second-degree murder, whereas under the current law partial defences reduce murder to manslaughter.[7]

2.12 We also discussed the meaning of "bodily harm", which traditionally has been used in both fatal and non-fatal offences against the person.[8] We concluded that the term does not adequately capture harm resulting from a recognised psychiatric disorder or illness and therefore should not be used.[9] We made the following recommendation:

2.13 We recommend that the term 'injury' should be used instead of the words 'bodily harm'.[10]

2.14 In our recommended structure, intention to cause "serious injury" is an element of both first and second-degree murder. However, we did not recommend a definition of "serious", since the determination of the degree of injury is a matter to be left to the jury (when returning a verdict) and the judge (who will reflect the degree of harm intended at the sentencing stage).[11]

Criticism of the 2006 recommended structure

2.15 Since the Government decided not to implement our recommendations on the structure of homicide offences, the problems with the existing two-tier structure have remained unaddressed.

2.16 As we explain above, we focus our discussion primarily on the criticism of the 2006 Report.[12] Our recommended structure was generally favourably received, with the majority of criticism aimed at the particular categorisation of offences within the tiers, rather than the structure itself.[13] More generally, some commentators argued that the primary rationale of our recommended regime seemed to be mitigating the impact and

---

7 We discuss partial defences in Chapter 3.

8 Murder, Manslaughter and Infanticide (2006) Law Com No 304, paras 2.82 to 2.84.

9 It is now established that "bodily harm" must be understood to include a recognised psychiatric disorder or illness: *R v Chan-Fook* [1994] 1 WLR 689; *R v Ireland* [1998] AC 147.

10 Murder, Manslaughter and Infanticide (2006) Law Com No 304, para 2.85.

11 Above, paras 2.86 to 2.94.

12 See paras 1.27 and 1.28 above.

13 Among many: J Rogers, "The Law Commission's Proposed Restructuring of Homicide" (2006) 70 *Journal of Criminal Law* 223; V Tadros, "The Homicide Ladder" (2006) 69 *Modern Law Review* 601; A Ashworth, "Principles, Pragmatism and the Law Commission's Recommendations on Homicide Law Reform" [2007] *Criminal Law Review* 333; A Bickle, "Proposed Reforms to Partial Defences and Their Implications for Mentally Disordered Defendants" (2008) 1 *Journal of Mental Health Law* 38; W Wilson, "The Structure of Criminal Homicide" [2006] *Criminal Law Review* 471.

reach of the mandatory life sentence, without adequately considering moral coherence and fair labelling arguments.[14]

2.17 While the recommendations were described as "pragmatic",[15] some felt that the Report should have been clearer about the principles underpinning the proposals, and should have ensured that this rationale was consistent throughout. Professors Oliver Quick and Celia Wells suggested that the three-tier structure "lacks nuance", particularly in relation to the reformulated partial defences, and argued that moral and conceptual analysis had been passed over in favour of "jury-friendly" simplicity.[16] Others noted that categorising homicide offences by using degrees of fault, while sensible, is just one of a number of possibilities that might be available to recognise different levels of moral culpability.[17]

2.18 Similar criticism was made in relation to inadequate consideration of fair labelling. Catherine Elliott and Professor Claire de Than described both the existing law and the proposed three-tier structure as a "blunt instrument" to deal with a wide range of forms of homicide.[18] They suggested that the fault element alone is inadequate to distinguish between offences, taking important fair labelling factors such as motive and victims' vulnerabilities out of the hands of the jury. These criticisms were most apparent in relation to the classification of offences within the three-tier structure, and particularly the "breadth" of second-degree murder.[19]

2.19 Some have criticised the role played by partial defences within the recommended structure for a variety of reasons. We refer to this line of criticism below from paragraph 3.20. Again, a common criticism in this context was that too many offences had been grouped under the label of second-degree murder. For example, some argued that defendants whose culpability was deemed to have been reduced due to a successful plea of a partial defence did not belong in the same category as other offences on that 'rung' of the ladder.[20]

2.20 Professor Jeremy Horder, the Law Commissioner for Criminal Law at the time of our previous review of homicide, writing years after the publication of the 2006 Report and after his mandate as Commissioner, acknowledged that arguments in favour and against the existing structure are "quite evenly balanced", but "the case for a three-tier

---

14 Professor Wilson (above, 471) for example, observed that "inevitably, the pragmatism informing the proposals as a whole discloses the malign influence of their terms of reference, which excludes consideration of the mandatory sentence". Similarly, see Bickle (above, 40-42).

15 See for example W Wilson, "What's Wrong with Murder?" (2007) 1 *Criminal Law and Philosophy* 157, 163.

16 O Quick and C Wells, "Getting Tough with Defences" [2006] *Criminal Law Review* 514, 515. Despite these criticisms, Professors Quick and Wells did consider that the 2005 consultation paper presented a neater, clearer ladder of offences and greater consistency in the application of defences than the existing law.

17 V Tadros, "The Homicide Ladder" (2006) 69 *Modern Law Review* 601, 602-603.

18 C Elliott and C de Than, "Restructuring the Homicide Offences to Tackle Violence, Discrimination and Drugs in a Modern Society" (2009) 20 *King's Law Journal* 69.

19 See, for example, A Bickle, "Proposed Reforms to Partial Defences and their Implications for Mentally Disordered Defendants" (2008) 1 *International Journal of Mental Health and Capacity Law* 38.

20 See detailed discussion below from para 3.21 to 3.23.

law of homicide is still strong".[21] As he argued, "there is the potential for greater moral sophistication in a jury verdict that reflects a choice between three different grades of homicide offences",[22] since the introduction of a second-degree murder offers greater clarity than a discretionary assessment in which the judge and the jury are allowed to decide that, in a particular case, the life sentence should not be imposed.

2.21 Some warned that the three-tier structure, while preferable to the current law, would carry practical implications that the 2006 Report did not adequately address.[23] These included the risk of 'split' juries arising from the multiple forms of second-degree murder, the risk of confusing juries with multiple routes to verdict, and uncertainty as to the factual basis for sentencing. In the 2006 Report, we observed that, under the existing law, a jury which cannot agree on a verdict of murder can return an alternative verdict of manslaughter without the need for a retrial.[24] We concluded that the same would apply under the recommended three-tier structure, since juries would have the possibility of returning an alternative verdict of second-degree murder or manslaughter, depending on the charge on the indictment. We considered that the introduction of a middle tier (second-degree murder) would not lead to a larger number of cases where a retrial would have been necessary in the event of a split jury.[25] However, some have observed that the problem of 'split' juries remains, and so does the risk of juries being forced to reach a compromise verdict. Professor Richard Taylor gave the example of a defendant who says that they were provoked, but that in any event they had no intention to kill or cause serious injury, and even if they did intend serious injury, had no awareness of the serious risk of causing death. If jurors are split between which of these propositions they accept, this would lead to three different underlying rationales for a verdict of second-degree murder. The jury would be unable to reach a single factual basis for conviction, potentially necessitating a retrial.[26] This issue is not unique to our recommended reform, but may have been exacerbated by it. Dr Jonathan Rogers considered a similar example and noted the difficulty this would create for sentencing, given that judges would have no indication as to the basis on which the verdict of second-degree murder was returned.[27]

2.22 Professor Horder echoed the same concerns regarding possible jury disagreement. He argued that, even though a three-tier structure increases moral clarity, "more

---

21 J Horder, "The Mandatory Sentence and the Case for Second-degree Murder" in A Reed, M Bohlander, N Wake, E Engleby and V Adams (eds), *Homicide in Criminal Law. A Research Companion* (2019) p 7. For more details, see J Horder, *Homicide and the Politics of Law Reform* (2012).

22 Above p 8.

23 A Ashworth, "Principles, Pragmatism and the Law Commission's Recommendations on Homicide Law Reform" [2007] *Criminal Law Review* 333, 342.

24 See Criminal Law Act, s 6(2).

25 Murder, Manslaughter and Infanticide (2006) Law Com No 304, paras 2.117 to 2.121. We emphasised, however, that the adding of new counts should not become a routine procedure, since it might be in the interest of justice instead to order a retrial.

26 R Taylor, "The Nature of 'Partial Defences' and the Coherence of (Second-degree) Murder" [2007] *Criminal Law Review* 345, 356-358.

27 J Rogers, "The Law Commission's Proposed Restructuring of Homicide" (2006) 70 *Journal of Criminal Law* 223, 228-232. Dr Rogers supported the proposed three-tiered structure of homicide offences. However, he emphasised some areas, such as the possibility of split verdicts, which he felt would benefit from further discussion.

choice is not necessarily better than less" because, especially in cases with multiple defendants, "the greater the number of possible verdicts, the greater the scope for jury disagreement over the right outcome, and hence the greater the scope for inconclusive trials".[28] Professor Horder argued that the structure provisionally proposed in the consultation paper (with murder confined to intention to kill)[29] was simpler and would have caused fewer problems for juries, observing that "the conclusion I have come to, based on the experience in England and Wales, is that simplicity should be the watchword".[30]

2.23 There were further concerns that the 2006 Report was too vague on important definitions. Commentators such as Professor Andrew Ashworth observed that despite the Law Commission's commitment to clarity, several key phrases had not been explored in detail.[31] On "serious injury", for example, Professor Ashworth agreed with our recommendation to replace "bodily harm" with "injury", but argued that "serious" should have been defined at least in part, since it played a critical role in distinguishing first-degree murder (requiring intention to cause "serious injury") from the second type of second-degree murder (requiring intention to cause "some injury").[32] Similarly, Professor William Wilson noted the difficulties with defining what counts as "serious" injury, but argued that the absence of a definition is unsatisfactory and shifts the burden to the jury.[33]

The current review of homicide law

2.24 Devising a structure of homicide offences which would adequately reflect different levels of culpability is the starting point of any reform of homicide law. Since the present review is also concerned with a reconsideration and update of the 2006 recommendations, we will start by revisiting the recommended three-tier structure, as well as the categories in each tier, consider advantages and disadvantages of that structure and take into account possible alternative categorisations of homicide offences.

---

28 J Horder, "The Mandatory Sentence and the Case for Second-degree Murder" in A Reed, M Bohlander, N Wake, E Engleby and V Adams (eds), *Homicide in Criminal Law. A Research Companion* (2019) p 8.

29 A New Homicide Act for England and Wales? (2005) Law Commission Consultation Paper No 177, paras 1.38 to 1.40.

30 J Horder, "Issues in Reforming Homicide Law: the English Experience": Seminar organised by the Scottish Law Commission on the Structure of Homicide and the Mental Element (2018).

31 A Ashworth, "Principles, Pragmatism and the Law Commission's Recommendations on Homicide Law Reform" [2007] *Criminal Law Review* 333, 344. Professor Ashworth expressed his admiration for the substance of the 2006 Report and supported the use of the "ladder principle" in reforming the law of homicide. He made critical observations in relation to elements of the report, including the definitions of first- and second-degree murder and the recommendations on duress.

32 Above, pp 335 – 336.

33 W Wilson, "What's Wrong with Murder?" (2007) 1 *Criminal Law and Philosophy* 157, 176. Professor Wilson supported the use of a three-tiered structure, and considered that the Law Commission was right to take what he considered to be a "pragmatic" approach to reform. He stated that the provisional proposals in the consultation paper had been "much improved" in the final report, noting the strength of the package as a whole.

Issue 1.

2.25 We invite evidence on the advantages and disadvantages of the existing structure of homicide offences (a two-tier structure comprised of murder and manslaughter).

2.26 We invite evidence on the advantages and disadvantages of the structure of homicide offences that we recommended in 2006 (a three-tier structure comprised of first-degree murder, second-degree murder and manslaughter).

2.27 We invite evidence on possible alternative structures of homicide offences.

THE FAULT ELEMENT

The existing law

2.28 There are no statutory definitions of the fault elements of homicide offences. Some guidance regarding their meaning has been provided by courts over time. Below we provide an overview of the fault elements of homicide offences.

2.29 The fault element of murder is intention to kill or cause grievous bodily harm. At common law, "intention" is understood as a person's intention to bring about a certain result. For example, D has resolved to kill V and shoots them, causing their death. In most cases, intention is to be given its ordinary meaning.[34] There are cases, however, where the common understanding of intention might be too narrow. In such cases it is open to the jury to find that D had the necessary intention when D did not intend (as commonly understood) the result, but the result (barring some unforeseen intervention) was a virtually certain consequence of D's action.[35] For example, D does not intend to kill V but pushes V off a high cliff, causing V's death. In such a case, D may be taken to have intended the result (V's death). This is commonly referred to as "oblique" or "indirect" intention.

2.30 The fault element of reckless manslaughter is foresight of a risk of death or serious injury. As noted above at paragraph 2.6, reckless manslaughter is rarely charged, since it is usually possible to rely on other types of involuntary manslaughter offences.[36]

2.31 Regarding gross negligence manslaughter, it is for the jury to assess whether, "having regard to the risk of death involved, the conduct of the defendant was so bad in all the

---

[34] In *R v Moloney* [1985] AC 905, 926, Lord Bridges indicated that "when directing a jury on the mental element necessary in a crime of specific intent, the judge should avoid any elaboration or paraphrase of what is meant by intent and leave it to the jury's good sense to decide whether the accused acted with the necessary intent".

[35] *R v Woollin* [1999] AC 82. For the model jury direction on indirect intention, see Judicial College, *The Crown Court Compendium. Part I: Jury and Trial Management and Summing Up* (April 2025 update), pp 144-145.

[36] For a rare case, see *R v Lidar* [2000] 2 Cr App R 328. It has been argued that reckless manslaughter does not exist as a separate manslaughter offence: F Stark, "Reckless Manslaughter" [2017] *Criminal Law Review* 767.

circumstances as to amount in their judgment to a criminal act or omission".[37] In conducting the assessment, the jury must take into account whether a reasonably prudent person in D's position would have foreseen an obvious risk of death.[38]

The 2006 Report

2.32 In 2006, we made recommendations regarding the meaning of some fault elements of homicide offences.

2.33 We recommended that the existing law governing the meaning of intention be codified as follows:

(1) A person should be taken to intend a result if he or she acts in order to bring it about.

(2) In cases where the judge believes that justice may not be done unless an expanded understanding of intention is given, the jury should be directed as follows: an intention to bring about a result may be found if it is shown that the defendant thought that the result was a virtually certain consequence of his or her action.[39]

2.34 In our recommended three-tier structure, we used the terms "awareness" of a "serious risk" of death. We acknowledged that the use of these terms is unlikely to cause practical difficulties, but decided to recommend a definition of these terms.

2.35 We recommended the following definitions:

(1) 'Awareness' of risk should be understood to involve consciously adverting to a risk.

(2) A risk is to be regarded as 'serious' if it is more than insignificant or remote.[40]

2.36 We also dealt with the fault elements of involuntary manslaughter. We concluded that it was not necessary to keep a separate offence of reckless manslaughter in our recommended three-tier structure, since conduct traditionally falling under that category would be included within second-degree murder (or, in less serious cases, would be captured by gross negligence manslaughter).[41]

---

37 *R v Adomako* [1995] 1 AC 171.

38 *R v Rose* [2017] EWCA Crim 1168, [2018] QB 328.

39 Murder, Manslaughter and Infanticide (2006) Law Com No 304, para 3.27.

40 Above, paras 3.35 and 3.40.

41 Above, paras 3.52 to 3.57. On reckless manslaughter under the current law, see para 2.30 above.

2.37 We made recommendations regarding the fault element of gross negligence manslaughter, building upon the earlier Law Commission review of involuntary manslaughter.[42]

2.38 We recommended the adoption of the definition of causing death by gross negligence given in our earlier report on manslaughter:

(1) a person by his or her conduct causes the death of another;

(2) a risk that his or her conduct will cause death would be obvious to a reasonable person in his or her position;

(3) he or she is capable of appreciating that risk at the material time; and

(4) his or her conduct falls far below what can reasonably be expected of him or her in the circumstances.[43]

Criticism of the 2006 recommendations on fault elements

2.39 Some have criticised our recommended definitions of fault elements. Regarding the definition of intention, for example, Professor Victor Tadros observed that the definition was wider than the ordinary meaning of intention, since it included foresight of death as a virtual certainty, potentially causing confusion to juries. A better approach, in his view, would have been to define intention narrowly and then develop additional definitions of states of mind which are not intention, but are sufficient to fulfil the fault element of murder.[44] Along the same lines, Professor Ashworth noted that the proposed definition did not clarify whether foresight of death as a virtual certainty should be regarded as a type of intention or as a separate category of fault.[45]

2.40 Both Professors Tadros and Ashworth reiterated a well-known criticism of the virtual certainty test, according to which a jury *may* find intention, but *is not obliged* to do so, when they find that death was a virtually certain consequence of D's action.[46] The recommended definition, in their view, does not identify under what circumstances a

---

42 Involuntary Manslaughter (1996) Law Com No 237, para 5.34. See also above at para 1.14.

43 Murder, Manslaughter and Infanticide (2006) Law Com No 304, para 3.60.

44 V Tadros, "The Homicide Ladder" (2006) 69 *Modern Law Review* 601, 604. Professor Tadros considered the provisional proposals in the 2005 consultation paper "impressive, imaginative and detailed", and believed that they would remedy some of the defects in the existing law. However, he suggested that there were particular weaknesses in the offence definitions and the role of the partial defences.

45 A Ashworth, "Principles, Pragmatism and the Law Commission's Recommendations on Homicide Law Reform" [2007] *Criminal Law Review* 333, 334.

46 See, among many, A Norrie, "After *Woollin*" [1999] *Criminal Law Review* 532; J C Smith, "Commentary on *R v Woollin*" [1998] *Criminal Law Review* 890. In *R v Matthews* [2003] EWCA Crim 192, [2003] 2 Cr App R 30, the Court of Appeal held that the jury were wrongly directed that they *must* find intention if a result was foreseen as virtually certain.

jury might conclude that death is a virtually certain result of D's action, but decline to find intention.[47]

2.41 On "serious" risk, Professor Ashworth questioned whether the choice of "serious" as opposed to, for example, "significant" risk is sensible, given that in the recommended structure references are made also to "serious risk of death" for both first and second-degree murder. Professor Ashworth also pointed to the fact that the recommended definition includes an understanding of risk which is not limited to the seriousness of injury but includes also "a risk that ought to be taken seriously",[48] effectively introducing two evaluative elements for the jury.[49]

The current review of homicide law

2.42 Irrespective of any possible structure of homicide offences, fault elements are essential to distinguish between different levels of culpability. Consequently, they play a critical role also with respect to fair labelling and the imposition of sentence.

2.43 As part of our review, we will consider the challenges raised by the fault elements of the existing homicide offences (murder and manslaughter) and whether the fault elements need statutory definitions and, if so, how they should be defined.

Issue 2.

2.44 We invite evidence on the use of the fault elements of existing homicide offences and any challenges they have raised in practice.

2.45 We invite evidence on the advantages and disadvantages of defining the fault elements of the existing homicide offences and on their possible definitions.

2.46 We invite evidence on the advantages and disadvantages of the definitions of the fault elements that we recommended in 2006.

---

47 V Tadros, "The Homicide Ladder" (2006) 69 *Modern Law Review* 601, 604-607; A Ashworth, "Principles, Pragmatism and the Law Commission's Recommendations on Homicide Law Reform" [2007] *Criminal Law Review* 333, 334-335. In the 2006 Report, we observed that the discretion left to juries is "the price of avoiding complexity" which would be generated by a more extensive set of rules (para 3.21).

48 Murder, Manslaughter and Infanticide (2006) Law Com No 304, para 3.36.

49 A Ashworth, "Principles, Pragmatism and the Law Commission's Recommendations on Homicide Law Reform" [2007] *Criminal Law Review* 333, 336-337.

COMPLICITY IN MURDER

The existing law

2.47 The law of complicity (also known as "accessory" or "secondary" liability) does not apply exclusively to homicide offences. We provide below an overview of types of accessory liability, to the extent that it is relevant to our review of homicide law.[50]

2.48 Before we discuss legal rules on complicity, it is important to clarify the terminology. When a criminal offence is committed by more than one perpetrator, their contribution to the commission of the offence may differ depending on their role. For example, if P kills V and D drives the gateway car, P is the "principal" (because P carried out the act of killing), and D is the "accomplice", also referred to as "accessory" or "secondary party" (because D assisted P in committing the offence). However, two defendants might be "co-principals" if they both commit the offence with the same mental element: for example, both D1 and D2 attacked V at the same time with the intention to kill, causing V's death.

2.49 Complicity has been largely developed at common law, but its statutory foundation can be found in section 8 of the Accessories and Abettors Act 1861:

> Whosoever shall aid, abet, counsel, or procure the commission of any indictable offence, whether the same be an offence at common law or by virtue of any Act passed or to be passed, shall be liable to be tried, indicted, and punished as a principal offender.

2.50 The criminal law punishes assisting or encouraging the commission of an offence. Part 2 of the Serious Crime Act 2007 ("SCA 2007") sets out three separate offences: intentionally encouraging or assisting an offence; encouraging or assisting an offence believing it will be committed; and encouraging or assisting offences believing one or more will be committed.[51] The offences replaced the old common law offence of incitement, implementing in part the recommendations made by the Law Commission in 2006.[52] They are inchoate offences, meaning that D is liable if they do an act "capable of encouraging or assisting" the commission of one or more criminal offence(s) by P.[53] D incurs liability whether or not the act has in fact encouraged or assisted the offence(s), and whether or not P goes on to commit an offence. For example, where D hands a gun to P to kill the victim, it does not matter whether P then throws the gun away: D will be liable as long as the act (handing a gun) is *capable* of assisting P in killing the victim.[54]

---

50 The law of complicity was last subject to our review around the same time as our previous review of homicide law: see Participating in Crime (2007) Law Com No 305. The Government has not implemented our recommendations.

51 Respectively, sections 44, 45 and 46.

52 Inchoate Liability for Assisting and Encouraging Crime (2006) Law Com No 300. Notably, we recommended the introduction of two offences, rather than the three eventually introduced by the SCA 2007.

53 'Inchoate' means 'incomplete' or 'underdeveloped'. The purpose of inchoate liability is to criminalise conduct before harm has occurred. Other examples of inchoate liability are attempt and conspiracy.

54 D must also have the mental element required by sections 44, 45 or 46.

2.51 Under the common law doctrine of joint enterprise, where there is more than one party to an offence, the secondary party (D) may be convicted of the offence committed by the principal (P), provided that D had a "conditional" intent for the more serious offence. For instance, if the bank robbers agree that they will shoot a bank employee if necessary, all can be convicted of murder if one employee is shot by P and dies. For D to be convicted of the principal's offence, it would need to be proven that D had intended that if P used the weapon, P would do so with intent to kill or cause serious harm.

2.52 A form of joint enterprise used to arise under what was sometimes referred to as "parasitic accessory liability", according to which D could be convicted of murder if D foresaw that P might intentionally kill or seriously harm the victim.[55] In other words, foresight, rather than conditional intent, was sufficient to find D liable of the same offence committed by P. In 2016, a constitution of both the UK Supreme Court and the Privy Council held in the combined cases of *Jogee and Ruddock* that the common law had taken a "wrong turn": rather than simply foreseeing the principal's offence, the secondary party must have intended it.[56] Foresight is no more than evidence from which a jury could infer that the secondary party had the conditional intent required for the more serious offence committed by the principal. This is a question of fact for the jury.

Problems with the existing law

2.53 As we noted in our previous report on Participating in Crime, "the doctrine of secondary liability has developed haphazardly and is permeated with uncertainty".[57] This remains true following the developments that occurred in the last eighteen years. We provide below an overview of some lines of criticism that emerged in relation to these developments.

2.54 Regarding the offences of encouraging and assisting crime, there is consensus that the SCA 2007 has created an overly complex framework. In the 2013 report on the post-legislative scrutiny of Part 2 of the SCA 2007 conducted by the House of Commons Justice Committee, Professors Child, Spencer and Virgo agreed that the three offences of encouraging and assisting, and their respective elements, are very difficult to interpret, suggesting their complete repeal and replacement.[58] Professors Spencer and Virgo noted that the SCA 2007:

> contained clauses that were based on the Law Commission's Draft Bill, but as regurgitated by the Home Office they had become significantly more complex,

---

55 The origin of the doctrine is usually attributed to the Privy Council case of *Chan Wing-Siu v The Queen* [1985] AC 168.

56 *R v Jogee, Ruddock v The Queen* [2016] UKSC 8, [2016] UKPC 7, [2017] AC 387.

57 Participating in Crime (2007) Law Com No 305, para 1.12.

58 Post-legislative Scrutiny of Part 2 (Encouraging or Assisting Crime) of the Serious Crime Act 2007, Report of the House of Commons Justice Committee (2013-14) HC 639, Appendix A (letters from academics).

creating three new offences instead of the Law Commission's proposed two, and significantly more oppressive, because the fault element had been watered down.[59]

2.55 Courts have also struggled to make sense of the offences. In *Sadique and Hussain*, Hooper LJ mentioned that "the provisions creating and defining section 46 [of the SCA 2007] are very complex", adding that extra time and additional submissions were required to try to understand them.[60] The Court of Appeal's attempt to clarify the fault element of the offences has been criticised by Professor Child, who observed that "the Court of Appeal can now be added to the chorus of academic voices lamenting the impenetrably complex drafting of Part 2 of the Serious Crime Act 2007 in general, and the *mens rea* provisions in particular".[61]

2.56 The doctrine of joint enterprise after *Jogee* has also attracted criticism.[62] A key challenge left unsolved by *Jogee* is that D's act of assistance or encouragement, while requiring some causal connection to the principal offence, does not require a material contribution to the offence carried out by P. While "mere presence" is not enough to ground liability, D may assist and encourage P by being present at the scene ("by contributing to the force of numbers"[63]), coupled with knowledge (or foresight) of P's intention. Dr Beatrice Krebs argued that leaving juries with the possibility of inferring intention from presence and knowledge (or foresight) "risks slipping back to parasitic accessory liability".[64]

2.57 Another problematic aspect post-*Jogee* concerns the interpretation of the fault element required to convict the secondary party. As Professor David Ormerod and Karl Laird observed, the fact that juries can be directed that they can infer intention from foresight will create confusion for courts in interpreting the concept of intention and potentially lead to inconsistent approaches between courts. First, the question remains whether the jury should be directed that a high level of foresight is required to infer intention, because "failure to do so could lead the jury to infer the intention too readily from some 'middling' degree of foresight".[65] Secondly, there is a risk that

---

59 J Spencer and G Virgo, "Encouraging and Assisting Crime: Legislate in Haste, Repent at Leisure" (2008) 9 *Archbold News* 7, 9. As we noted above, the SCA 2007 is based on, and adapts, our recommendations in the report on Inchoate Liability for Assisting and Encouraging Crime (2006) Law Com No 300.

60 *R v Sadique and Hussain* [2011] EWCA Crim 2872, [2012] 1 WLR 1700, at [33]. Notably, the applicant argued that s 46 was incompatible with art. 7 of the European Convention on Human Rights because it was too vague and uncertain. The Court of Appeal held that there was no incompatibility.

61 J Child, "Exploring the Mens Rea Requirements of the Serious Crime Act 2007 Assisting and Encouraging Offences" (2012) 76(3) *Journal of Criminal Law* 220, 220. Other academics were equally critical: see Post-legislative Scrutiny of Part 2 (Encouraging or Assisting Crime) of the Serious Crime Act 2007, Report of the House of Commons Justice Committee (2013-14) HC 639, Appendix A (letters from academics).

62 For an overview of the outstanding challenges raised by the judgment in *Jogee*, see Criminal Appeals (2025) Law Commission Consultation Paper No 268, paras 10.53 to 10.77. For more insights into these challenges, see B Krebs (ed), *Accessorial Liability After Jogee* (2020).

63 *R v Jogee, Ruddock v The Queen* [2016] UKSC 8, [2016] UKPC 7, [2017] AC 387, at [89].

64 B Krebs, "Written Jury Directions and Contributing to the Force of Numbers" (2020) 84 *Journal of Criminal Law* 172, 174.

65 D Ormerod and K Laird, "*Jogee*: Not the End of a Legal Saga but the Start of One" [2016] *Criminal Law Review* 539, 545.

different fault elements for D and P "could make it easier to convict the secondary party than it would be to convict the principal".[66]

2.58 An issue has also arisen regarding appeals based on the subsequent development in the law in cases where a person was guilty of another offence. The Supreme Court in *Jogee* anticipated that in most cases where an accessory was originally convicted of murder under pre-*Jogee* joint enterprise liability, they could instead be convicted of manslaughter (as a result of the higher fault threshold required for a murder conviction on the basis of joint enterprise post-*Jogee*).[67] This assumption has been questioned by Professor Dennis Baker, who has argued that if a person is a party to a joint enterprise to cause actual bodily harm, but the principal inflicts serious harm resulting in death, the secondary party is not guilty of manslaughter. They cannot be guilty as a secondary party to manslaughter (since the principal has committed murder, not manslaughter). However, the act which they did assist or encourage (the infliction of actual bodily harm) cannot be shown to have resulted in death in circumstances where the principal has done an act of inflicting greater harm.[68]

2.59 Concerns have also been raised that the doctrine of joint enterprise has been applied disproportionately to young Black men and boys (often in the context of alleged gang violence), suggesting racial stereotyping. Data contained in a pilot to review joint enterprise homicide and attempted homicide cases conducted by the CPS showed that the proportion of Black boys and young men who were prosecuted in joint enterprise cases was significantly greater than their proportion of the population as a whole.[69]

2.60 In a study conducted for the Centre for Crime and Justice Studies, Dr Nisha Waller has suggested that the Law Commission should review the law on joint enterprise and consider issues such as the narrowing of the wide scope of the law and the appropriateness of mandatory life sentences.[70]

2.61 Recent research has shown that the majority of women convicted under joint enterprise (mostly for murder or manslaughter) had a peripheral involvement in the violent event, often not even present at the scene nor having engaged in any physical violence. Women who are often marginalised or with a history of prior abuse have been convicted due to their association with their abusive partners (principal offenders), with the prosecution characterising them as a facilitator of violence. This characterisation often relies on myths and gender-based stereotypes portraying

---

66 D Ormerod and K Laird, "*Jogee*: Not the End of a Legal Saga but the Start of One" [2016] *Criminal Law Review* 539, 550.

67 See Criminal Appeals (2025) Law Commission Consultation Paper No 268, para 10.52.

68 D Baker, "Lesser Included Offences, Alternative Offences and Accessorial Liability" (2016) 80 *Journal of Criminal Law* 446.

69 Crown Prosecution Service, *Joint Enterprise Pilot 2023: Data Analysis* (September 2023). The pilot was the result of campaigning from organisations such as Liberty and Joint Enterprise Not Guilty by Association (JENGbA), following the recommendation contained in the report of the Rt Hon David Lammy MP's Independent Review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic Individuals in the Criminal Justice System (September 2017), p 20.

70 N Waller, *The Legal Dragnet. Joint Enterprise Law and Its Implications* (Centre for Crime and Justice Studies 2024), p 26.

women as either bystanders who failed to prevent the commission of the offence, or whose mere presence encouraged, or actively incited or manipulated, the (male) principal perpetrators.[71] Domestic abuse and coercive control often result in women being unable to withdraw from the scene and to engage with investigations, which in turn support police officers' (often gendered) inferences about women's role in encouraging or actively assisting their male partners to commit the offence.[72]

The 2006 Report

2.62 In the 2006 Report we dealt with complicity only to the extent that it was relevant to the review of homicide offences. Our 2006 recommendations were made prior to the two major developments on complicity law outlined above (the enactment of the SCA 2007[73] and the Supreme Court and Privy Council's judgment in *Jogee* in 2016).

2.63 We made the following recommendation:

2.64 D should be liable to be convicted of P's offence of first or second-degree murder (as the case may be) if

(1) D intended to assist or encourage P to commit the relevant offence; or

(2) D was engaged in a joint criminal venture with P, and realised that P, or another party to the joint venture, might commit the relevant offence.[74]

2.65 We also made another recommendation regarding joint enterprise in homicide cases (pre-*Jogee*):

---

71 B Clarke and K Chadwick, *Stories of Injustice: The Criminalisation of Women Convicted Under Joint Enterprise Laws* (2020), p 26.

72 S Hulley, "Defending 'Co-offending' Women: Recognising Domestic Abuse and Coercive Control in 'Joint Enterprise' Cases Involving Women and Their Intimate Partners" (2021) 60(4) *The Howard Journal of Crime and Justice* 580, 597.

73 Our 2006 Report on murder, manslaughter and infanticide was published the same year as our report on inchoate liability, which reviewed that area of law more holistically. As observed above, the offences of encouraging and assisting contained in the SCA 2007 have implemented in large part our recommendations.

74 Murder, Manslaughter and Infanticide (2006) Law Com No 304, para 4.4.

2.66 We recommended that D should be liable for manslaughter if the following conditions are met:

(1) D and P were parties to a joint venture to commit an offence;

(2) P committed the offence of first-degree murder or second-degree murder in relation to the fulfilment of that venture;

(3) D intended or foresaw that (non-serious) harm or the fear of harm might be caused by a party to the venture; and

(4) a reasonable person in D's position, with D's knowledge of the relevant facts, would have foreseen an obvious risk of death or serious injury being caused by a party to the venture.[75]

Criticism of the 2006 recommendations on complicity

2.67 The two recommendations on complicity have been discussed in great (and often very technical) detail.[76] Given that there have been major developments regarding the law of complicity since our 2006 recommendations, we do not set out those discussions in detail here.

2.68 However, it is worth observing here that some have expressed concern that our 2006 recommendations on complicity in relation to homicide offences might have created inconsistencies in the absence of a wholesale reform of the law of complicity. Professor Sullivan, for example, found "disturbing" the possibility that there might have been a statutory framework for complicity in homicide offences whereas the law of complicity for other offences might have continued to be governed by common law. He warned that reform must not occur in isolation from a general review of complicity.[77] The risk, eventually, did not materialise, since neither our recommendations on complicity in homicide nor our 2007 recommendations on participating in crime have been taken forward by the Government, while our recommendations on encouraging and assisting (applicable to all crimes and not just to homicide offences) have been implemented in large part in the SCA 2007.[78]

The current review of homicide law

2.69 A full review of the law of complicity is outside the scope of our review of homicide law. In line with our Terms of Reference, we will review aspects of complicity in so far

---

75 Murder, Manslaughter and Infanticide (2006) Law Com No 304, para 4.6.

76 G R Sullivan, "Complicity for First-degree Murder and Complicity in an Unlawful Killing" [2006] *Criminal Law Review* 502; J Horder and D Hughes, "Joint Criminal Ventures and Murder: The Prospects for Law Reform" (2009) 20 *King's Law Journal* 379; I Dennis, "Adjusting the Boundaries of Murder: Complicity" [2008] *Criminal Law Review* 923.

77 G R Sullivan, "Complicity for First-degree Murder and Complicity in an Unlawful Killing" [2006] *Criminal Law Review* 502, 502 and 513.

78 See discussion above at para 2.50.

as they relate to homicide offences, partial and full defences, and the sentencing framework for murder. This will include, as per our Terms of Reference, "the implications of the current law on joint enterprise (following the Supreme Court and Privy Council's decision in *Jogee*) for any reform of the law of homicide".

2.70 Since the law on complicity has significantly changed after 2006, as we observed above, we must now understand the impact of these developments on our previous recommendations, as part of our task to update and reconsider the 2006 Report, as well as consider any challenges posed by these developments in so far as they are relevant to our review of homicide law.

Issue 3.

2.71 We invite evidence on any aspect of the law of complicity, as relevant to homicide offences, partial and full defences and the sentencing framework for murder.

"MERCY" AND CONSENSUAL KILLINGS

The existing law

2.72 A "mercy" killing can be defined as a killing where a defendant intentionally caused a victim's death for compassionate reasons. If the victim has expressed the wish to die, a "mercy" killing is also a consensual killing (for example, in cases of voluntary euthanasia). However, a consensual killing may occur for reasons other than compassion, provided that the victim has freely agreed to die. The criminal law in England and Wales does not have a specific offence or defence for "mercy" or consensual killings. If D intentionally kills V with the genuine belief that it is in V's best interests to die, or because V has consented to be killed, D would ordinarily be convicted of murder.[79]

2.73 In limited circumstances, D may be convicted of manslaughter, rather than murder, if:

(1) D successfully pleads diminished responsibility or loss of control at the time of killing V. In such a case, the partial defences operate in the same way as they would operate regarding any other killing to reduce a charge of murder to one of manslaughter.

(2) D was a surviving party to a suicide pact, that is an agreement between D and one or more persons (including V) whose object was the death of all of them. A suicide pact is an example of consensual killing. When D proves that they killed V (or procured a third party to do so) in pursuance of a suicide pact, D may be convicted of manslaughter rather than murder.[80] In such a case, the law

---

79 *R v Inglis* [2010] EWCA Crim 2637, [2011] 1 WLR 1110, at [37]; *R (Nicklinson) v Ministry of Justice* [2014] UKSC 38, [2015] AC 657, at [17].

80 Homicide Act 1957, s 4. If, however, D assists or encourages V to commit suicide (in the absence of a suicide pact), D is liable under the Suicide Act 1961, s 2.

recognises that V's consent to be killed partially excuses the actions of the surviving D.

2.74 While "mercy" killing is not recognised by the law as a justification to commit murder, "a belief by the offender that the murder was an act of mercy" may be recognised as a mitigating factor at sentencing.[81]

2.75 In 2023, the CPS published updated prosecution guidance on homicide, following a public consultation on the sections of the public interest guidance that cover "mercy killing" and suicide pacts.[82] The aim of the update is to assist prosecutors in deciding whether a prosecution in a case of "mercy killing" or a suicide pact is in the public interest. The updated guidance draws heavily on the CPS policy for cases of assisting or encouraging suicide.[83] Factors against prosecution include: cases where the victim had reached a voluntary, clear, settled and informed decision that they wished for their life to end; or where the actions of the suspect may be characterised as reluctant, in the face of significant emotional pressure due to the victim's wish for their life to end. Factors in favour of prosecution include: cases where the suspect influenced the victim not to seek medical treatment, palliative care and/or independent professional advice or denied access to such treatment, care and/or professional support; or where the suspect was acting in their capacity as a medical doctor, nurse, or other healthcare professional and the victim was in their care.[84]

The 2006 Report

2.76 "Mercy" killing inevitably engages discussions about euthanasia and suicide. The Terms of Reference of our previous review of homicide law specified that euthanasia and suicide fell within the scope of the project only "inasmuch as they form part of the law of murder, not the more fundamental issues involved which would need separate debate".

2.77 In the 2006 Report, we observed that "mercy" killing was within the scope of the project only "in so far as it related to the grounds for reducing a more serious homicide offence to a less serious one".[85]

2.78 Our previous review considered some aspects related to "mercy" killing as they related to homicide offences more widely (namely, the introduction of a specific offence or partial defence of "mercy" killing; the operation of diminished responsibility to include cases of carers suffering from depression who have killed the recipient of

---

81 Sentencing Code, Sch 21, para 10(f).

82 CPS, *Consultation on Public Interest Guidance for Suicide Pact and 'Mercy Killing' Type Cases* (January 2022).

83 CPS, *Suicide: Policy for Prosecutors in Respect of Cases of Encouraging and Assisting Suicide* (last updated October 2014). The policy was published after the Appellate Committee of the House of Lords ordered the Director of Public Prosecutions to clarify the public interest factors in favour of and against the prosecution of cases of assisting or encouraging suicide: *R* (*Purdy) v DPP* [2009] UKHL 45, [2010] 1 AC 345 at [55] and [56].

84 CPS, *CPS Published Updated Homicide Prosecution Guidance* (October 2023). The full guidance is available here.

85 Murder, Manslaughter and Infanticide (2006) Law Com No 304, para 7.1.

their care; and the repeal of the partial defence of killing pursuant to a suicide pact).[86] However, we concluded that these issues, some of which are inextricably connected with the debate about the legalisation of euthanasia, would have deserved a much more extensive consultation than that possible under the review of homicide law.[87]

2.79 While we did not make any specific recommendation on the substantive law, we recommended that the Government should undertake a public consultation on whether the law should recognise either an offence or a partial defence of "mercy" killing and that, pending the outcome of the public consultation, the provisions on suicide pacts should be retained.[88]

2.80 In the 2006 Report, we referred to two surveys conducted by Professor Barry Mitchell in 2003 and 2005 suggesting, among other things, that public opinion is generally sympathetic to those who believe that they have killed as an act of mercy, in particular when V had consented. The surveys showed very little support for a mandatory life sentence in cases of "mercy" killing, but no clear majority favouring no prosecution in such cases.[89]

Criticism of the 2006 Report on "mercy" and consensual killings

2.81 Some have expressed concern that our recommendation to modernise the requirements of diminished responsibility (with a focus on recognised medical conditions)[90] might have rendered a successful plea of the partial defence more difficult in cases of consensual "mercy" killing.[91] We considered this critique, which was also raised during consultation, in the 2006 Report, but concluded that the partial defence of diminished responsibility "should not be stretched so far that it becomes a backdoor route to partial excuse for caring but rational "mercy" killers".[92]

2.82 Others have reiterated the criticism, also expressed during consultation, that we had been too cautious in not considering either an offence or partial defence of "mercy" killing. Dr Rogers, for example, stressed that "it is a mystery" why we did make recommendations regarding a full defence of duress, but argued that a partial defence of "mercy" killing would have been beyond the scope of the review.[93]

---

86 Murder, Manslaughter and Infanticide (2006) Law Com No 304, paras 7.26 – 7.45.

87 Above, para 7.2.

88 Above, paras 7.49 – 7.50.

89 Above, paras 7.12 – 7.17.

90 We discuss the partial defence of diminished responsibility below from para 3.10.

91 L Kennefick, "Introducing a New Diminished Responsibility Defence for England and Wales" (2011) 74 *Modern Law Review* 750, 758-758; A Bickle, "Proposed Reforms to Partial Defences and Their Implications for Mentally Disordered Defendants" (2008) 1 *Journal of Mental Health Law* 38, 48.

92 Murder, Manslaughter and Infanticide (2006) Law Com No 304, para 7.37. See also, the preceding discussion at paras 7.34-7.35.

93 J Rogers, "The New Homicide Ladder" (2007) 157 *New Law Journal* 48, 50-51. On this issue, see Murder, Manslaughter and Infanticide (2006) Law Com No 304, paras 7.26-7.33.

The current review of homicide law

2.83 Like our previous review, the Terms of Reference of our current review of homicide law specify that we will only "consider euthanasia and involvement in suicide inasmuch as they form part of the law of homicide, not the issues associated with their possible legalisation and regulation which would need separate debate".

2.84 We note that, at the time of publication of this Call for Evidence, the House of Commons has voted at third reading in favour of the Terminally Ill Adults (End of Life) Bill, which proposes to allow adults who are terminally ill, subject to safeguards and protections, to request and be provided with assistance to end their own life. The bill is due to undergo its second reading in the House of Lords.[94]

2.85 As part of the current review of homicide law, we will consider "mercy" and consensual killings only in relation to substantive homicide offences, full and partial defences, and the sentencing framework for murder.

Issue 4.

2.86 We invite evidence on the practice of prosecution and trial of "mercy" and consensual killings and on any relevant development in relation to these issues.

INFANTICIDE

The existing law

2.87 Under the Infanticide Act 1938, a mother who kills her child under 12 months old, and at the time the balance of the mother's mind was disturbed as a result of her not having fully recovered from the effect of giving birth or due to the effect of lactation, is guilty of infanticide rather than murder or manslaughter.[95] A mother charged with murder or manslaughter in these circumstances may also raise infanticide as a defence.[96] This means that infanticide is a separate homicide offence as well as a defence to murder and manslaughter.

2.88 The sentence available for infanticide is the same as that for manslaughter, namely a maximum sentence of life imprisonment. In most cases an infanticide conviction

---

94 For updates, see bills.parliament.uk/bills/3774. We will monitor any developments throughout our project and consider what impact, if any, a future act will have on "mercy" and consensual killings in the context of our review of the law of homicide.

95 Infanticide Act 1938, s 1(1), as amended by the Coroners and Justice Act 2009 (which made infanticide also an alternative to manslaughter). The Infanticide Act 1938 was passed at the time when the death penalty was the mandatory sentence upon conviction for murder (although it could later be commuted). The introduction of a separate offence of infanticide (effectively treated as manslaughter) removed such cases from the scope of the death penalty, thereby treating a woman who killed her child as a result of postpartum mental health conditions with more leniency. The death penalty for murder was abolished by the Murder (Abolition of Death Penalty) Act 1965.

96 Above, s 1(2), as amended by the Coroners and Justice Act 2009 (which made infanticide also a defence to manslaughter).

results in a non-custodial sentence (albeit often subject to a treatment or hospital order).[97]

2.89 The offence of infanticide is unique among homicide offences in that it only applies to a biological mother who has killed her own baby within the first year of the baby's life.

The 2006 Report

2.90 In our previous review of homicide offences, we dealt extensively with infanticide. During consultation, we considered many aspects, including the abolition of the offence/defence of infanticide, its merger with the partial defence of diminished responsibility, its psychiatric foundation, the extension of its application to fathers and other carers, and the limit on the child's age.[98]

2.91 Our recommendations were also informed by Professor Ronnie Mackay's empirical study on infanticide cases and diminished responsibility, and Professor Ian Brockington's tables on mental disorders during childbirth and post-partum and on the classification of types of infanticides.[99]

2.92 We emphasise that our recommendations were made before the Court of Appeal clarified in 2007 that the offence of infanticide may apply whenever its requirements are made out and regardless of what offence would otherwise have been committed.[100] The Coroners and Justice Act 2009 amended the Infanticide Act 1938 to make clear that a verdict of infanticide can be returned as an alternative to both murder and manslaughter, and infanticide can be raised as a defence to both offences.[101]

2.93 In the 2006 Report, we made the following recommendation:

2.94 Based on the responses to our consultation and recent research, we recommend that the offence/defence of infanticide be retained without amendment (subject to 'murder' being replaced with 'first-degree murder or second-degree murder').[102]

2.95 We also discussed a procedural issue arising from some infanticide cases, known as the "*Kai-Whitewind* dilemma".[103] In some cases a mother suffering from a postpartum psychiatric disorder may deny killing her child, but the denial is a symptom of the very disorder that prompted the killing. In those cases, it may not be possible to present psychiatric evidence without the defendant's cooperation. As a result, the defendant

---

97 Murder, Manslaughter and Infanticide (2006) Law Com No 304, para 8.6. However, see the discussion below at para 2.100 of recent trends regarding sentencing.

98 Above, paras 8.15-8.43.

99 Respectively, in Appendices D and E to the 2006 Report.

100 *R v Gore* [2007] EWCA Crim 2789, [2008] *Criminal Law Review* 388.

101 See Infanticide Act 1938, ss 1(1) and (2) as amended by the Coroners and Justice Act 2009.

102 Murder, Manslaughter and Infanticide (2006) Law Com No 304, para 8.23.

103 Above, paras 8.44-8.59. See also *R v Kai-Whitewind* [2005] EWCA Crim 1092, [2005] 2 Cr App R 31.

may be convicted of murder (carrying a mandatory life sentence), whereas a charge or defence of infanticide could also have been possible.

2.96 To address this dilemma, we made the following recommendation with a view to preserving the right of the defendant not to be compelled to give evidence and allowing the trial judge to postpone sentence until the issue of infanticide is resolved:

> 2.97 In circumstances where infanticide is not raised as an issue at trial and the defendant (biological mother of a child aged 12 months or less) is convicted by the jury of murder [first-degree murder or second-degree murder], the trial judge should have the power to order a medical examination of the defendant with a view to establishing whether or not there is evidence that at the time of the killing the requisite elements of a charge of infanticide were present. If such evidence is produced and the defendant wishes to appeal, the judge should be able to refer the application to the Court of Appeal and to postpone sentence pending the determination of the application.[104]

The current review of homicide law

2.98 Since infanticide is both a homicide offence and a defence to murder and manslaughter, it falls within the scope of our current review. We will consider any development regarding the offence/defence of infanticide as part of our reconsideration of the 2006 recommendations.

2.99 We are aware that recently research has been conducted on multiple aspects of infanticide. For example, the Perinatal Legal Project is currently focusing on infanticide and works with academics, practitioners and psychologists to update guidance on perinatal disorders and related legal issues.[105] The Cambridge Pro Bono Project published a report in 2024 on the law of infanticide, concluding that some aspects warrant another review by the Law Commission, including the nexus between disturbance to the balance of the mother's mind and childbirth, the impact of socio-economic factors and prenatal mental illness, the effects of lactation, and the limit on the child's age.[106]

2.100 In addition, Dr Karen Brennan and Dr Emma Milne have observed that in recent years the prosecution's approach has been to charge mothers with murder and leave the issue of infanticide to juries. At the same time, juries seem more reluctant to find a mother guilty of infanticide when the victim is a newborn child, and instead they are found guilty of murder or manslaughter.[107]

---

104 Murder, Manslaughter and Infanticide (2006) Law Com No 304, paras 8.46 and 8.58.

105 See the Perinatal Legal Project's page at perinatallegalproject.co.uk/about/.

106 Cambridge Pro Bono Project, *The Law of Infanticide. A Preliminary Review of the UK Infanticide Act 1938* (2024).

107 K Brennan and E Milne, "100 Years of Infanticide: The Law in Context" in K Brennan and E Milne (eds), *100 Years of the Infanticide Act; Legacy, Impact and Future Directions* (2023).

Issue 5.

2.101 We invite evidence on any aspect relevant to infanticide, including on how the offence and defence of infanticide currently operate in practice.

OTHER ISSUES TO CONSIDER

2.102 As we explained above, the current review is not confined to the issues on which we made recommendations in 2006. One of the purposes of this Call for Evidence is indeed to identify additional issues which warrant inclusion in our review.

2.103 For example, there are currently specific offences of causing death in addition to the general offences of murder and manslaughter. These include offences of causing death by driving,[108] and the offence of causing or allowing a child or vulnerable adult to die or suffer serious physical harm.[109] We will need to consider whether it is proportionate and appropriate to include such offences within scope of our review.

Issue 6.

2.104 We invite views on any additional issues relevant to substantive homicide offences, including offences of causing death, which should be considered within the scope of the review.

---

[108] There are multiple offences of causing death by driving under the Road Traffic Act 1988: causing death by dangerous driving (s 1); causing death by careless, or inconsiderate, driving (s 2B); causing death by driving: unlicensed or uninsured drivers (s 3ZB); causing death by driving: disqualified drivers (s 3ZC); and causing death by careless driving when under influence of drink or drugs (s 3A).

[109] Domestic Violence, Crime and Victims Act 2004, s 5.

Chapter 3: Defences

INTRODUCTION

3.1 In the second strand of our project we will review partial defences to murder and full defences as they relate to the homicide offences. This will encompass:

(1) how defences interact with the structure of homicide offences;

(2) how defences operate in relation generally to homicide offences, especially in light of the developments that have occurred since our 2006 Report;

(3) how defences operate in relation specifically to victims of domestic abuse who kill their abusers.

PARTIAL DEFENCES TO MURDER

3.2 In this section, we discuss the partial defences of loss of control and diminished responsibility. We discussed the other two partial defences to murder, namely suicide pact and infanticide,[1] in Chapter 2.

3.3 Loss of control and diminished responsibility are "partial" defences to murder because, when they are successful, D will be convicted of manslaughter, rather than murder. The rationale of the operation of partial defences is to recognise a lower level of blameworthiness of D's actions. Manslaughter as a result of a successful plea of a partial defence is commonly known as "voluntary" manslaughter.[2] When a partial defence is successful, D will not be subject to the mandatory life sentence for murder and will be instead sentenced for manslaughter, which has a discretionary sentence of up to life imprisonment.

The existing law

3.4 The Coroners and Justice Act 2009 ("CJA 2009") replaced the common law defence of provocation with that of loss of control, and reformed diminished responsibility, implementing for the most part our recommendations on the two partial defences.[3]

---

1 As we observed at para 2.87, infanticide is a separate homicide offence or can be raised as a defence to murder (as well as manslaughter).

2 See above at para 2.6.

3 In our report on Partial Defences to Murder (2004) Law Com No 290, we recommended the reformulation of the requirements of the common law defence of provocation (at para 3.68). We discussed, but did not recommend, a possible reformulation of diminished responsibility. Instead, we explained that further consideration should wait until a comprehensive review of homicide law was carried out (at paras 5.93 to 5.97). Drawing from our 2004 Report, in the 2006 Report on murder, manslaughter and infanticide we recommended the reformulation of provocation relying in large part on the 2004 recommended definition, and a reformulation of diminished responsibility, both as part of our recommended three-tier structure of homicide offences (at paras 5.11 and 5.112). Although the Government did not implement the recommendations for a new homicide structure, it took forward our recommendations regarding the

Loss of control

3.5 In our 2006 Report, we described the previous defence of provocation, whose statutory foothold was provided for in the Homicide Act 1957, as a "confusing mixture of common law and statute".[4]

3.6 Section 54(1) of the CJA 2009 reformed the requirements of loss of control as follows:

(a) D's acts and omissions in doing or being a party to the killing resulted from D's loss of self-control,

(b) the loss of self-control had a qualifying trigger, and

(c) a person of D's sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of D, might have reacted in the same or in a similar way to D.

3.7 "Qualifying triggers" are defined in section 55. D must have lost control as a result of:

(1) fear of serious violence from V against D or another person;

(2) things said or done of an extremely grave character which caused D to have a justifiable sense of being seriously wronged; or

(3) a combination of (1) and (2).[5]

3.8 There are circumstances where loss of control cannot be relied upon by D. First, loss of control is not applicable when D killed "in a considered desire for revenge".[6] Secondly, D cannot claim a fear of serious violence or a sense of being seriously wronged if D incited them to be caused "for the purpose of providing an excuse to use violence".[7] Thirdly, sexual infidelity is not to be regarded as a thing said or done which caused D to have a justifiable sense of being seriously wronged.[8] These exclusions have posed numerous challenges in circumstances where a victim of domestic abuse kills their abuser, which we discuss in more detail below from paragraph 3.85.

---

definitions of provocation and diminished responsibility through the CJA 2009. While the CJA 2009 adopted in large part our reformulation of provocation, the name of the defence was replaced by "loss of control" (and s 3 of the Homicide Act 1957, which contained the statutory basis for provocation, was repealed accordingly).

4 Murder, Manslaughter and Infanticide (2006) Law Com No 304, para 5.3. Section 3 of the Homicide Act 1957 read: "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".

5 Section 55(3), (4) and (5).

6 Section 54(4).

7 Section 55(6)(a) and (b).

8 Section 55(6)(c).

3.9 There is often a "factual overlap" between loss of control and self-defence, and a defendant charged with murder may seek to rely on both defences.[9] Loss of control differs from the full defence of self-defence which, if successfully pleaded, will result in D's acquittal.[10] While loss of control applies only to murder, self-defence is applicable to all criminal offences.

Diminished responsibility

3.10 Prior to the CJA 2009, diminished responsibility was defined broadly and interpreted flexibly by courts. In our 2004 report on partial defences to murder, we observed that the law was a "chaos", the defence had been "grossly abused" and outcomes of cases were a "lottery".[11]

3.11 The CJA 2009 clarified and reformulated the requirements of diminished responsibility, implementing in large part our 2006 recommendations, which aimed to modernise the law. The amended section 2 of the Homicide Act 1957[12] provides that:

> (1) A person ("D") who kills or is a party to the killing of another is not to be convicted of murder if D was suffering from an abnormality of mental functioning which—
>
> (a) arose from a recognised medical condition,
>
> (b) substantially impaired D's ability to do one or more of the following:
>
> (i) to understand the nature of D's conduct;
>
> (ii) to form a rational judgment;
>
> (iii) to exercise self-control, and
>
> (c) provides an explanation for D's acts and omissions in doing or being a party to the killing.

3.12 Pursuant to section 2(1B), "for the purposes of subsection (1)(c), an abnormality of mental functioning provides an explanation for D's conduct if it causes, or is a significant contributory factor in causing, D to carry out that conduct".[13]

3.13 Diminished responsibility differs from the full defence of insanity because, when the latter is successful, the jury will return a "special verdict" that the defendant is "not

---

9 *R v Dawes, Hatter and Bowyer* [2013] EWCA Crim 322, [2014] 1 WLR 947 at [58].

10 Self-defence, sometimes also called "private defence", has two separate legal sources: common law and section 3 of the Criminal Law Act 1967 (on the use of force for the prevention of crime or for making an arrest). Section 76 of the Criminal Justice and Immigration Act 2008 sets out the elements of both types of defence. We discuss self-defence below from para 3.66.

11 Partial Defences to Murder (2004) Law Com No 290, paras 5.43 and 5.49.

12 As amended by the CJA 2009, s 52.

13 On this causation requirement, see discussion below from para 3.5 to 3.8.

guilty by reason of insanity".[14] As with loss of control, diminished responsibility is a partial defence only to a murder charge, whereas insanity can be relied upon as a defence to any crime.

The 2006 Report

3.14 In our 2006 Report on murder, manslaughter and infanticide, we made recommendations for the reform of the partial defences of (at that time) provocation and diminished responsibility which mirrored similar recommendations made in our separate 2004 Report on partial defences to murder.[15]

3.15 We consider that it is not necessary to recall here the 2006 recommendations on partial defences, since the requirements of (what would have then become) loss of control and of diminished responsibility are now found in the current law discussed in the section above. Here, we highlight some key differences between our 2006 recommendations and their implementation through the CJA 2009.

3.16 The major difference between our 2006 recommendations on partial defences and the current law is the result of the fact that our recommendations on the structure of homicide offences were not implemented. In 2006, our recommendations on partial defences were embedded in our recommended three-tier structure of homicide offences. In the three-tier structure, provocation (now loss of control) and diminished responsibility, when successfully pleaded, would have reduced first-degree murder to second-degree murder. Since the recommended three-tier structure was not accepted by the Government, loss of control and diminished responsibility currently operate within the two-tier structure to reduce murder to manslaughter.[16]

3.17 Regarding loss of control, the CJA 2009 departed from our 2006 recommendations in one significant respect.[17] We recommended the abolition of the requirement of "loss of self-control". We argued that the requirement was "unnecessary and undesirable", since it caused confusion in cases where there was a delay between the provocation and the loss of self-control. We also noted that the requirement privileged men's typical reactions to provocation over women's typical reactions, which are more likely

---

14 The reference here is to insanity at the time of the commission of the offence. See Trial of Lunatics Act 1883, s 2, and Criminal Procedure (Insanity) Act 1964, s 1. In such a case, the court may make a hospital order (with or without a restriction), a supervision order or an order for absolute discharge: Criminal Procedure (Insanity) Act 1964, s 5. See also the Law Commission's Criminal Liability: Insanity and Automatism, Discussion Paper (23 July 2013).

15 Regarding provocation, we observed in the 2006 Report that "we undertook a thorough review of the defence in 2004. We continue to believe that the recommendations we made at that time for reform of the defence are the right ones. However, at that time we had not been asked to consider the role of the defence in a reformed law of murder" (para 5.2). For a more detailed discussion regarding the interaction between the 2004 and the 2006 recommendations, see para 3.4.

16 For a critique of the selective implementation of our recommendations, see, among many: J R Spencer, "Messing Up Murder" (2008) 8 *Archbold News* 5.

17 For more details about the differences between our 2006 recommendations on provocation and loss of control as introduced by the CJA 2009, see C Withey, "Loss of Control, Loss of Opportunity?" (2011) 4 *Criminal Law Review* 263; J Miles, "The Coroners and Justice Act 2009: A 'Dog's Breakfast' of Homicide Reform" (2009) 10 *Archbold News* 6.

to include a combination of anger, fear, frustration and desperation.[18] Therefore, our recommended defence of provocation moved away from the language of "loss of self-control" and specified instead some qualifying triggers on which the defendant's reaction could be based.[19] However, sections 54 and 55 of the CJA 2009 retained the requirement of "loss of control", which gives the name to the current defence.[20]

3.18 Our recommendation on the reform of the requirements of diminished responsibility was implemented for the most part by the CJA 2009. One significant difference is that our recommended requirement that the abnormality of mental functioning could have arisen also from "developmental immaturity in a defendant under the age of eighteen" was not taken forward by the Government.[21] As the law stands, the abnormality of mental functioning can only arise from "a recognised medical condition".

3.19 Another difference concerns the causation requirement added by the CJA 2009, according to which the abnormality of mental functioning must have "caused", or be a "significant contributory factor in causing", D to commit the offence.[22] We did not explicitly recommend that requirement but emphasised that there should be an "appropriate connection" between the abnormality of mental functioning and the killing, ultimately observing that "the final choice of particular words is a matter for those drafting the legislation".[23]

Criticism of the 2006 recommendations on partial defences

Structural criticism

3.20 As we noted at paragraph 2.19, some have criticised the role played by loss of control and diminished responsibility within the recommended three-tier structure.

3.21 Professor Tadros, for example, described our recommendation that a successful partial defence plea would reduce first-degree murder to second-degree murder as "broadly pragmatic", in the sense that the practical consequences for defendants would be to avoid the mandatory life sentence and introduce a level of discretion in sentencing. However, he argued that if the purpose of the ladder structure of homicide offences was to ensure that defendants were categorised relative to their degree of wrongdoing, "then there would seem good reason to allow partial defences a role in moving between categories of the ladder regardless of sentencing consequences".[24]

---

18 Murder, Manslaughter and Infanticide (2006) Law Com No 304, para 5.17 to 5.19. We discuss loss of control in relation to victims of abuse who kill their abusers below from para 3.85.

19 Above, para 5.11.

20 In their response to our 2006 recommendations, the Government justified retaining loss of control in the following way: "The Government believes that it is important that the partial defence is grounded in a loss of self-control. We are not persuaded by the arguments for removing the requirement that the defendant must have lost self-control when they killed: we believe that the danger of opening this up to cold-blooded killing is too great": Ministry of Justice, *Murder, Manslaughter and Infanticide: Summary of Responses and Government Position* (2009), para 62.

21 For the justification of the inclusion of "developmental immaturity" in our recommendation, see Murder, Manslaughter and Infanticide (2006) Law Com No 304, paras 5.125 to 5.137.

22 Homicide Act 1957, s 2(1B), as amended by the CJA 2009.

23 Murder, Manslaughter and Infanticide (2006) Law Com No 304, para 5.124.

24 V Tadros, "The Homicide Ladder" (2006) 69 *Modern Law Review* 601, 618.

He queried why provocation, for example, would reduce the culpability of a defendant in circumstances otherwise amounting to first-degree murder, but would not have the same effect on the culpability of the same defendant in circumstances otherwise amounting to second-degree murder. He identified possible alternative models. These included a successful partial defence moving a given homicide offence "one rung down the ladder" from the original charge, or allowing "degrees" of each defence which would move an offence down to a rung proportionate with the degree of culpability.[25]

3.22 Other commentators took the view that the partial defences did not sit well within second-degree murder at all. For example, Professor William Wilson considered that provocation should reduce murder to manslaughter. He argued that the label of murder, even second-degree murder, would be "too strong a designation for those reacting, as an ordinary person might be expected to react, to gross provocation or overreacting under fear of serious violence".[26] He also did not consider that diminished responsibility reducing first-degree murder to second-degree murder was coherent with the other categories in that rung.[27] Under the Law Commission's reformulated test, successful use of this defence would mean that there had been a causal link between the abnormality of mental functioning and the killing. Professor Wilson did not consider that this could be comparable to other categories falling within second-degree murder, particularly cases where a person with normal mental functioning killed intending to do serious injury, or one who does so with reckless indifference.

3.23 Some have also flagged issues related to fair labelling. For instance, Dr Andrew Bickle noted that second-degree murder appeared to encompass a very broad range of intent and culpability and therefore, in the proposed three-tier system, "partial defences would find themselves alongside a more heterogenous group of offences than under the overall less differentiated two-tier system".[28] Similarly, Professor Ashworth questioned why second-degree murder should be labelled murder at all, since four of its five heads would currently be termed manslaughter. He queried whether juries would be willing to apply the label of "murder" to killings under provocation or diminished responsibility.[29]

Stricter requirements of the reformed partial defences

3.24 A further criticism of the 2006 report related to the "narrowing" of both provocation and diminished responsibility through the introduction of stricter requirements. This was closely linked with the suggestion that the Law Commission had been too reluctant to

---

25 This option, as well as other options discussed below, were also raised during consultation. See the discussion, and the justification of our position that partial defences should reduce a charge of first-degree murder to a charge of second-degree murder only, in Murder, Manslaughter and Infanticide (2006) Law Com No 304, paras 2.132 to 2.158.

26 W Wilson, "What's Wrong with Murder?" (2007) 1 *Criminal Law and Philosophy* 157, 177.

27 W Wilson, "The Structure of Criminal Homicide" [2006] *Criminal Law Review* 471, 485.

28 A Bickle, "Proposed Reforms to Partial Defences and their Implications for Mentally Disordered Defendants" (2008) 1 *Journal of Mental Health Law* 38.

29 A Ashworth, "Principles, Pragmatism and the Law Commission's Recommendations on Homicide Law Reform" [2007] *Criminal Law Review* 333, 334.

consider the introduction of other partial defences, such as a partial defence for consensual compassionate killings, or "mercy killings".[30] Some commentators suggested that this risked creating a gap between the defences, arguing that cases where the defences might previously have been stretched to do justice would now fall into this gap.

3.25 For example, examining the Government's implementation of the recommendations, Sally Ireland remarked that:

> The narrowing of diminished responsibility is particularly significant in the context of the narrowing of the provocation defence, since more cases will fall through the 'gap' between the two specific defences.[31]

3.26 She highlighted particular issues with the structure of diminished responsibility. She suggested that the "more specific requirements of the new defence" might make it harder to use "in 'sympathetic' cases such as consensual mercy killing by a family member, particularly in relation to the acceptance of pleas".[32] One such stricter requirement was the need for a "recognised medical condition". Another was the requirement that the abnormality of mental functioning "causes, or is a significant contributory factor in causing" the killing.[33]

3.27 Similarly, Dr Louise Kennefick suggested that the requirement for an abnormality of mental functioning arising from a recognised medical condition "may have more far-reaching consequences than originally anticipated".[34] She noted that this might narrow the defence by excluding some disorders which may no longer be or were not yet accepted internationally; further, the new definition might be harder for the courts to "stretch" in order to "enable a verdict to meet the perceived justice of a case".[35]

Insufficient consideration of additional defences

3.28 Along with the criticisms related to the narrowing of the existing partial defences set out above, some commentators considered that there had been insufficient consideration of developing more partial defences or expanding the scope of the existing ones. Dr Rogers, for example, argued that the aim of the partial defences is "to allow for a civilised response when a first-degree murder does occur in strong mitigating circumstances", and described the lack of a recommendation on a partial mercy killing defence as a "missed opportunity".[36] Professor Tadros suggested that the Law Commission might have thought about developing a broader range of partial defences. He identified possible areas for further consideration to recognise emotional responses falling short of provocation or duress which would provide some form of

---

30 See discussion above at paras 2.81 and 2.82.

31 S Ireland, "Homicide Reform: Too Little, Too Soon?" (2008) 5 *JUSTICE Journal* 81, 89.

32 Above, p 88.

33 This causation requirement was not part of our recommendation: see above at para 3.19.

34 L Kennefick, "Introducing a New Diminished Responsibility Defence for England and Wales" (2011) 74 *Modern Law Review* 750, 757.

35 Above, 758.

36 J Rogers, "The New Homicide Ladder" (2007) 157 *New Law Journal* 48, 54. On this, see also para 2.82.

justification (such as fear induced by natural threats or depression). He suggested that there could be "a general defence of extreme emotional disturbance" which would encompass a wide range of emotional states.[37]

Problems with the existing law

3.29 Above we summarised the critique of partial defences arising directly from our 2006 recommendations and their implementation through the CJA 2009. However, both loss of control and diminished responsibility have been criticised for a number of other reasons since their reform. Below we provide an overview of the main lines of criticism. The critique which pertains specifically to cases where a victim of domestic abuse kills their abuser and seeks to rely on partial defences is discussed in the relevant section below from paragraph 3.74.

Problems with loss of control

3.30 As we noted above, the Government decided to retain the requirement of "loss of control", after which the current partial defence is named, whereas we recommended the abolition of that requirement and the retention of the name of "provocation".[38]

3.31 Under the old law of provocation, the requirement that a defendant must have "lost self-control" was problematic. The interpretation of the requirement by courts was that the loss of control must have been "sudden and temporary".[39] This was meant to exclude the operation of the defence in cases of planned and deliberate killings. However, concerns were raised that the requirement was unduly restrictive and often conducive to unjust outcomes, especially in cases where there was a delay between provocation and loss of control triggering the reaction (so-called "slow burn"). Such cases included women suffering from what is sometimes called "battered women syndrome",[40] who may not have reacted on impulse, but may have been driven to kill over a longer period of time.[41]

3.32 The requirement that loss of control must be "sudden" was explicitly removed by the CJA 2009.[42] In line with our 2006 recommendations, loss of control must now be grounded in a qualifying trigger and is expressly excluded in cases of revenge killings. Notwithstanding the reform, there has been widespread criticism of the retention of the

---

37 V Tadros, "The Homicide Ladder" (2006) 69 *Modern Law Review* 601, 616-617.

38 See discussion at para 3.17.

39 "A sudden and temporary loss of self-control is of the essence of provocation": *R v Duffy* [1949] 1 All ER 932, 932, quoting the summing-up of Devlin J. For a useful discussion of the old defence of provocation, see J Horder, *Provocation and Responsibility* (1992).

40 We emphasise that, while still sometimes in use, the concept of "battered women syndrome" has been criticised and is regarded as outdated since it stereotypes women as passive and helpless victims who fail to make rational choices: see the discussion in Defences for Victims of Domestic Abuse who Kill their Abusers, Background Paper (10 December 2024), pp 5-6.

41 Among the many critics of the old law, see J Dressler, "Battered Women Who Kill Their Sleeping Tormenters: Reflections on Maintaining Respect for Human Life While Killing Monsters" in S Shute and A Simester (eds), *Criminal Law Theory: Doctrines of the General Part* (2002) 259-282; K Rix, "Battered Woman Syndrome and the Defence of Provocation: Two Women with Something More in Common" (2001) 12 *Journal of Forensic Psychiatry* 131. For two relevant cases under the old law, see *R v Ahluwalia* [1992] 4 All ER 889 and *R v Thornton* [1992] 1 All ER 306.

42 CJA 2009, s 54(2): "[…] it does not matter whether or not the loss of control was sudden".

language of "loss of control", its lack of definition, and the restrictions imposed by the qualifying triggers.[43] Many have observed that the issue of delay of loss of control will continue to be evidentially relevant, therefore posing hurdles in cases of victims of domestic abuse who kill their abusers and seek to rely on the defence, as we discuss in more detail below at paragraph 3.87.

3.33 Some have questioned why sexual infidelity was explicitly excluded from the qualifying triggers.[44] Professor Jo Miles observed that "there are a number of circumstances which many people might feel should not provide an excuse for murder in this day and age, so why single out this one rather than leave the matter to the juries?" and "how, in reality, is the jury to 'disregard' sexual infidelity when it may be intimately bound up with a number of other 'permissible' triggers arising in a domestic context?". She concluded that "this sort of 'micro-management' of the defence may prove to do more harm than good".[45] The Court of Appeal has however clarified that where sexual infidelity is not the sole trigger, the issue of loss of control should be allowed to go to the jury.[46]

3.34 Concerns have also been raised that the Court of Appeal's interpretation of the reformulated defence over the years has not succeeded in clarifying the boundaries of loss of control in the absence of statutory guidance.[47] For example, in *Jewell* (a case where D was provoked over several weeks and killed V in the absence of immediate provocation), the Court of Appeal seemed to have widened, in principle, the scope of loss of control, accepting that it might be based on impaired judgment and reasoning, but concluded that a twelve-hour cooling off period entailed that the judge's decision not to leave the defence to the jury was "inevitable", "overwhelming" and "unimpugnable".[48]

3.35 Finally, a more fundamental criticism has focused on the usefulness of the defence and its role within homicide law. Professors Alan Reed and Michael Bohlander, for

---

43 The academic literature on the topic is vast. For some themes, see A Reed and M Bohlander (eds), *Loss of Control and Diminished Responsibility. Domestic, Comparative and International Perspectives* (2011). See also the contributions in A Reed, N Wake, B Simpsons (guest eds), "Domestic and Comparative Perspectives on Loss of Self-control and Diminished Responsibility as Partial Defences to Murder: A 10-year Review of the Coroners and Justice Act 2009 Reform Framework" (2021) 72 *Northern Ireland Legal Quarterly (Special Issue)* 161. See additional sources cited throughout this section.

44 CJA 2009, s 55(6)(c): "the fact that a thing done or said constituted sexual infidelity is to be disregarded". The Government justified the exclusion as follows: "We want to make it absolutely clear that sexual infidelity on the part of the victim can never justify reducing a murder charge to manslaughter. This should be the case even if sexual infidelity is present in combination with a range of other trivial and commonplace factors": Ministry of Justice and Home Office, *Murder, Manslaughter and Infanticide: Proposals for Reform of the Law* (July 2008) CP 19/08, para 32.

45 J Miles, "The Coroners and Justice Act 2009: A 'Dog's Breakfast' of Homicide Reform" (2009) 10 *Archbold News* 6, 7. For more insights, see A Reed and N Wake, "Sexual Infidelity Killings: Contemporary Standardisations and Comparative Stereotypes" in A Reed and M Bohlander (eds), *Loss of Control and Diminished Responsibility. Domestic, Comparative and International Perspectives* (2011).

46 *R v Clinton* [2012] EWCA Crim 2, [2013] QB 1.

47 G R Sullivan, H Crombag, J Child, "Loss of Control in the Appeal Courts" (2021) 72 *Northern Ireland Legal Quarterly* 200. For an overview of relevant cases, see R Fortson, "Partial Defences to Murder: Changed Landscape and Nomenclature" (2021) 72 *Northern Ireland Legal Quarterly* 171, 189-199.

48 *R v Jewell* [2014] EWCA Crim 414, at [52] and [55].

example, have argued that loss of control (and diminished responsibility) "are in fact nothing but instances of murder where the application of the mandatory life sentence appears too draconian in comparison to the blameworthiness of the defendant's act".[49] Similarly, Professors Bob Sullivan, Hans Crombag and John Child supported the case for the abolition of the mandatory life sentence, with a consequent shift of loss of control considerations from substantive homicide rules to the sentencing stage "as the best place to represent D's blame across a spectrum of rationality impairment".[50]

Problems with diminished responsibility

3.36 As we noted above, the reform of diminished responsibility aimed to align the defence with recognised medical and diagnostic standards. While generally this has been seen as a welcome development, some have criticised the reformed requirements for a number of reasons.

3.37 Professor Ronnie Mackay, for instance, argued that the reform was not limited to the modernisation of the law, but instead "the new plea introduces a number of new concepts and as such could be regarded as a radical departure from its former self".[51] This was part of the broader criticism, also levelled against loss of control for other reasons, that the requirements of the reformed defence of diminished responsibility are now much more restrictive, effectively "depriving it of much of its considerable utility as a safety valve on the mandatory life sentence".[52] We discuss this aspect in more detail at paragraph 3.89 in relation to victims of domestic abuse who kill their abusers.

3.38 Prior to the reform, there used to be what has been described as a "benign conspiracy" between the prosecution, the defence, medical experts and the court aiming to identify cases where a diminished responsibility plea was appropriate and cases where the determination should have been left to the jury.[53] An empirical study conducted by Professor MacKay, appended to the 2004 report on partial defences, concluded that out of 157 cases between 1997 and 2001 where diminished responsibility was raised, in only 13.4% of the cases did the plea fail, resulting in 21 murder convictions.[54]

---

49 A Reed and M Bohlander, "Introduction", in A Reed and M Bohlander (eds), *Loss of Control and Diminished Responsibility. Domestic, Comparative and International Perspectives* (2011), p 1.

50 G R Sullivan, H Crombag and J Child, "Loss of Control in the Appeal Courts" (2021) 72 *Northern Ireland Legal Quarterly* 200, 217. Similarly, see S Parsons, "The Loss of Control Defence – Fit for Purpose?" (2015) 79 *Journal of Criminal Law* 94, 99.

51 R MacKay, "The New Diminished Responsibility Plea: More than Mere Modernisation?" in A Reed and M Bohlander (eds), *Loss of Control and Diminished Responsibility. Domestic, Comparative and International Perspectives* (2011), p 9.

52 J Miles, "The Coroners and Justice Act 2009: A 'Dog's Breakfast' of Homicide Reform" (2009) 10 *Archbold News* 6, 8.

53 R Mackay, "Diminished Responsibility and Mentally Disordered Killers" in A Ashworth and B Mitchell (eds), *Rethinking English Homicide Law* (2000) 79; Partial Defences to Murder (2004) Law Com No 290, para 2.34.

54 Partial Defences to Murder (2004) Law Com No 290, Appendix B (The Diminished Responsibility Plea in Operation – An Empirical Study), p 155.

3.39 Following the reform, some have expressed a concern that the medicalisation of the partial defence has resulted in a greater deference to medical professionals, who are asked to make moral judgments about D's criminal responsibility arising from an abnormality of mental functioning.[55] Noting the absence of the term "responsibility" among the requirements of the reformed defence, Dr Kennefick observed that "diminished responsibility is not in itself a condition which can be suffered from, but is a legal definition".[56] Similarly, Professor David Ormerod and Karl Laird pointed out that the reformed defence "leaves less moral elbow room for the jury and is arguably harder for D to prove".[57]

3.40 However, the Supreme Court has recognised that

> medical evidence (nearly always forensic psychiatric evidence) has always been a practical necessity where the issue is diminished responsibility. If anything, the 2009 changes to the law have emphasised this necessity by tying the partial defence more clearly to a recognised medical condition, although in practice this was always required.[58]

3.41 Critics have also noted that terms such as "substantially impaired", "understand the nature of D's conduct", "form a rational judgment", as well as the causation requirements, are likely to cause problems for juries and medical professional alike.[59]

3.42 Dr Kennefick has argued that the amalgamation of law and medical disciplines, far from providing clarity, poses fair labelling challenges, because it excludes cases that cannot be squeezed into a classification of "recognised medical conditions". Similarly to what has been argued regarding loss of control, she questioned whether issues regarding diminished responsibility should instead be dealt with at the sentencing stage, suggesting that if the mandatory life sentence for murder were abolished, the partial defence could be dispensed with altogether.[60]

3.43 Regarding the effects of the reform, an updated empirical study conducted by Professors MacKay and Mitchell seemed to suggest that fewer diminished

---

55 Similar criticism was levelled at the old law: see among many, S Dell, "Diminished Responsibility Reconsidered" [1982] *Criminal Law Review* 809.

56 L Kennefick, "Introducing a New Diminished Responsibility Defence for England and Wales" (2011) 74 *Modern Law Review* 750, 764. For a different view on this issue, see R Fortson, "The Modern Partial Defence of Diminished Responsibility" in A Reed and M Bohlander (eds), *Loss of Control and Diminished Responsibility. Domestic, Comparative and International Perspectives* (2011), pp 25-27.

57 D Ormerod and K Laird, *Smith, Hogan, & Ormerod's Criminal Law* (2021) 572.

58 *R v Golds* [2016] UKSC 61, [2016] 1 WLR 5231. For a commentary, see M Gibson, "Diminished Responsibility in *Golds* and Beyond: Insights and Implications" [2017] *Criminal Law Review* 543.

59 R Mackay, "What's Happening with the Reformed Diminished Responsibility Plea?" (2021) 72 *Northern Ireland Legal Quarterly* 224; J Miles, "The Coroners and Justice Act 2009: A 'Dog's Breakfast' of Homicide Reform" (2009) 10 *Archbold News* 6, 7.

60 L Kennefick, "Introducing a New Diminished Responsibility Defence for England and Wales" (2011) 74 *Modern Law Review* 750, 765-766.

responsibility pleas are now being accepted under the new law (56.7% of 90 cases, in comparison to 77.1% of 157 cases in the previous study).[61]

The current review of homicide law

3.44 The review of the partial defences of loss of control and diminished responsibility falls squarely within our Terms of Reference. As observed above, the operation of partial defences is also linked to the structure of homicide offences. As part of our general review of homicide law, we will consider whether the two partial defences require reform and what role they should play within a possible new structure of homicide offences.

3.45 Since our current project will also deal with homicide in domestic abuse cases, we must also understand whether, and to what extent, loss of control and diminished responsibility operate satisfactorily in relation to a victim of domestic abuse who kills their abuser and wishes to rely on either defence. We discuss this below from paragraph 3.74.

Issue 7.

3.46 We invite evidence on the operation of the partial defence of loss of control and any existing challenges.

Issue 8.

3.47 We invite evidence on the operation of the partial defence of diminished responsibility and any existing challenges.

FULL DEFENCES AS THEY RELATE TO HOMICIDE OFFENCES

3.48 As we observed above, while loss of control and diminished responsibility can be relied upon only to reduce a charge of murder to a charge of manslaughter, full defences are usually applicable to any criminal offence (not just homicide offences)[62] and, when successfully raised, the defendant will be acquitted.[63]

---

61 R Mackay and B Mitchell, "The New Diminished Responsibility Plea in Operation: Some Initial Findings" [2017] *Criminal Law Review* 18. The authors stressed that the implications should be construed cautiously, and more research is needed on the operation of the defence.

62 However, see the discussion below on duress.

63 We use the term "defences" here for operational purposes, without delving into the discussion about other proposed classifications and the distinction between "defences", "justifications", "excuses" and similar. Among many, see G Williams, "The Theory of Excuses" [1982] *Criminal Law Review* 732; W Wilson, "The Structure of Criminal Defences" [2005] *Criminal Law Review* 371; A Simester, *Fundamentals of Criminal Law: Responsibility, Culpability, and Wrongdoing* (2021), pp 469-494.

3.49 In the 2006 Report, we only made recommendations regarding duress, recommending that it should be a full defence to murder. We did not review necessity and self-defence because "these defences are defences to many crimes other than homicide. They, therefore, need to be looked at as part of a review of the general law rather than specifically in a homicide context".[64] We also did not review insanity and intoxication.

The existing law of duress

3.50 Below we provide an overview of the current law of duress as relevant to homicide offences.

3.51 There are two forms of duress:

(a) Duress by threat: D is ordered to commit a criminal offence or else D (or another) will be killed or seriously injured immediately or almost immediately afterwards.

(b) Duress by circumstances: D has not been explicitly told to commit an offence, but the circumstances are such that D believes that unless they commit a crime, D or another will suffer death or serious injury. For example, D may rely on duress to a charge of dangerous driving if they were approached by a person wielding a gun at a traffic light.

3.52 The general principles governing both types of duress are the same. There are very stringent qualifying conditions for a plea of duress to succeed.[65]

3.53 Importantly for the purpose of our review, it is established in the case law that duress is available as a defence to all crimes, except murder and attempted murder.[66] It is however available as a defence to a charge of conspiracy to murder.[67]

3.54 In *Howe*, the House of Lords ruled that the defence of duress is not available as a defence to a murder charge. Lord Hailsham, Lord Chancellor, held that, in a case of threat of death or of serious injury:

> a reasonable man might reflect that one innocent human life is at least as valuable as his own or that of his loved one. In such a case a man cannot claim that he is choosing the lesser of two evils. Instead, he is embracing the cognate but morally disreputable principle that the end justifies the means.[68]

The 2006 Report

3.55 In the 2006 Report, we recommended that duress be a full defence to first-degree murder, second-degree murder and attempted murder.

---

64 Murder, Manslaughter and Infanticide (2006) Law Com No 304, para 1.3.

65 On these conditions, see *R v Z* [2005] UKHL 22, [2005] 2 AC 467. See also the discussion in Murder, Manslaughter and Infanticide (2006) Law Com No 304, paras 6.8 – 6.11.

66 On murder, see *R v Howe* [1987] AC 417. On attempted murder, see *R v Gotts* [1992] 2 AC 412.

67 *R v Ness* [2011] *Criminal Law Review* 645.

68 *R v Howe* [1987] AC 417.

3.56 We recommended that:

(1) Duress should be a full defence to first-degree murder, second-degree murder and attempted murder.

(2) For duress to be a defence to first-degree murder, second-degree murder and attempted murder, the threat must be one of death or life-threatening harm.[69]

(3) The defendant should bear the legal burden of proving the qualifying conditions of the defence on the balance of probabilities.[70]

3.57 We maintained that the law should not stigmatise a person who intentionally killed on the basis of a genuine belief that they acted in fear of death or serious injury when the jury is satisfied that an ordinary person of reasonable fortitude might have acted in the same way. For the same reason, we rejected the option of duress being a partial defence, which we argued would have also created problems of consistency and coherence in relation to the way the defence operates regarding any other crime.[71]

3.58 We argued that provocation (now loss of control) and diminished responsibility have a weaker moral claim to excusatory status than duress: in the former cases, D has not killed to preserve an innocent life, while in the latter D who acts under duress has killed to avoid death or serious injury. Therefore, we believed that a full defence as opposed to a partial defence was more justifiable in cases of duress.[72]

3.59 Regarding the burden of proof, we recognised that the fact that D must bear the legal burden of proving the qualifying conditions of duress on the balance of probabilities effectively entails a reverse burden of proof and a departure from common law.[73] We believed that it was justified due to a combination of factors: the difficulty of disproving duress, the relative ease with which the defence can be concocted, the serious nature of murder and attempted murder and the obligation under article 2 of the European Convention on Human Rights ("ECHR") to protect individuals from arbitrary deprivations of life.[74]

Critique of the 2006 recommendations on duress

3.60 In the 2006 Report, we observed that "consultees were more divided on duress as a defence to murder and attempted murder than on any other aspect of our review",

---

69 The threat must be directed against D or another, in line with the general requirements of duress outlined above at para 3.51.

70 Manslaughter and Infanticide (2006) Law Com No 304, para 6.21.

71 Above, paras 6.43 to 6.44. Our provisional proposal was that duress should have been a partial defence to first-degree murder, reducing the offence to second-degree murder (para 6.12).

72 Above, para 6.60.

73 Above, paras 6.101 to 6.109.

74 Above, para 6.111. See also the preceding discussion on burden of proof from para 6.87.

although there was general agreement that duress should be capable of being a defence, either partial or full, to murder and attempted murder.[75]

3.61 Our recommendation that duress should be a complete defence to (first and second-degree) murder and attempted murder was criticised. Dr Rogers, for example, opposed the recommendation, believing that "people who intend death necessarily make a decision – that one innocent person's life is worth more than another's – that is not theirs to make". As he argued, a conviction for second-degree murder would better communicate the importance of preserving the sanctity of life and allow sentencing discretion, without the defendant being necessarily imprisoned. He concluded that "it is hard to see why the commission should care to promote a proposal which is morally controversial and, in any event, politically unthinkable".[76]

3.62 Similarly, Professor Wilson agreed with our provisional proposal (then superseded in the 2006 Report) that duress should have been a partial defence to first-degree murder, but suggested that a murder committed under duress should have a special offence label "to immunize the coerced killer against the mandatory sentence and the murder label while leaving … on record his/her responsibility for the death of an innocent person".[77]

3.63 Professor Ashworth conceded that the discussion of duress was "in large part, measured and principled", but was unconvinced by the rationale underpinning the reverse burden of proof. While not denying "the pragmatic force of the recommendation", he argued that the assertion that duress is peculiarly difficult for the prosecution to disprove disregarded the same problem faced by the defendant attempting to prove duress, especially where it is one person's word against another, concluding that "no one should be liable to conviction for failing to establish their innocence".[78]

The current review of homicide law

3.64 The defence of duress is within the scope of our project. We will review the recommendations we made in 2006 on duress and consider the position now, taking into account any additional arguments in favour of and against the applicability of the defence of duress to homicide offences.

Issue 9.

3.65 We invite evidence on the defence of duress, in particular on its possible application to homicide offences.

---

75 Manslaughter and Infanticide (2006) Law Com No 304, para 6.1. See also A New Homicide Act for England and Wales? (2005) Law Commission Consultation Paper No 177, paras 7.18 – 7.19.

76 J Rogers, "The New Homicide Ladder" (2007) 157 *New Law Journal* 48, 50.

77 W Wilson, "What's Wrong with Murder?" (2007) 1 *Criminal Law and Philosophy* 157, 176.

78 A Ashworth, "Principles, Pragmatism and the Law Commission's Recommendations on Homicide Law Reform" [2007] *Criminal Law Review* 333, 340-342.

The existing law of self-defence

3.66 The law of self-defence is a combination of common law and statute. The statutory foundations are found in section 3 of the Criminal Law Act 1967 (use of force in the prevention of crime or in making an arrest) and section 76 of the Criminal Justice and Immigration Act 2008 (which sets out the elements of the defence).

3.67 The elements of self-defence can be summarised as follows:

(1) the victim must pose a threat to D or someone else or property.[79] The threat must be unjustified, so D cannot rely on self-defence against V if the attack by V was in fact provoked by D;[80]

(2) the *use* of force must be reasonable. The law does not impose on D a "duty to retreat", however, the possibility that D could have retreated, rather than warded off an attack, is a factor to consider in deciding whether it was reasonable for D to use force;[81]

(3) the *degree* of force used must be reasonable. The general test is that the degree of force is to be regarded as unreasonable if it was disproportionate.[82] A more flexible test applies in so-called "householder cases" (where D used force inside their home against a trespasser),[83] where the degree of force is to be regarded as unreasonable only if it was *grossly* disproportionate. In deciding whether the degree of force was reasonable, the defendant must be judged by reference to the circumstances as they genuinely believed them to be. The jury must consider that a person acting in self-defence might not be able to "weigh to a nicety the exact measure of any necessary action";[84]

(4) the defendant must act in order to defend themselves or another or property. A D who is acting solely out of retaliation or revenge cannot rely on the defence.[85]

3.68 When self-defence is relied upon as a defence to murder and manslaughter, the right to life protected under article 2 of the ECHR is engaged. Article 2 places an obligation upon the State to protect any person from an unlawful deprivation of life. However, a deprivation of life is not unlawful if it results from the use of force which is no more than absolutely necessary in defence of any person from unlawful violence.[86] The European Court of Human Rights ("ECtHR") has clarified that the term "absolutely necessary" indicates a compelling test of necessity, that the use of force must be

---

79 Therefore the term "*self*-defence", though widely used is somewhat misleading, since D might act also in defence of another person (or property).

80 *R v Rashfor*d [2005] EWCA Crim 3377, [2006] *Criminal Law Review* 547.

81 Criminal Justice and Immigration Act 2008 ("CJIA 2008"), s 76(6A).

82 CJIA 2008, s 76(5A) and (6). For details about the interpretation of the requirement, see *R (Collins) v Secretary of State for Justice* [2016] EWHC 33 (Admin), [2016] QB 862.

83 CJIA 2008, s 76(8A).

84 Above, s 76(3)-(4) and (7).

85 *R v Hussain and Hussain* [2010] EWCA Crim 94, [2010] 2 Cr App R (S) 60.

86 ECHR, art 2(2)(a).

proportionate, and that circumstances in which deprivation of life may be justified must be strictly construed.[87]

The current review of homicide law

3.69 As we noted above, we did not consider self-defence as part of our previous review of murder, manslaughter and infanticide. However, as it is particularly relevant for our consideration of defences for victims of domestic abuse who kill their abusers, we will include self-defence in the current review, to the extent that it is relevant to homicide law.

Issue 10.

3.70 We invite evidence on the challenges posed by the law of self-defence as relevant to homicide law.

Other full defences to consider in the homicide review

3.71 Our review of homicide law is not necessarily limited to the full defences of duress and self-defence. We will consider whether other full defences (such as, for example, necessity) should be included within its scope. However, we emphasise that our review of homicide law does not extend to a comprehensive review of full defences which are, as we stressed above, applicable not just to homicide offences. For this reason, we will consider including other full defences only in so far as they might raise issues relevant and unique to homicide law.

Issue 11.

3.72 We seek consultees' views on whether full defences other than duress and self-defence should be included within the scope of our review of homicide law.

3.73 We invite evidence on the challenges posed by other full defences in relation to homicide law.

---

87 *Giuliani and Gaggio v Italy* (2012) 54 EHRR 10 (App No 23458/02) (Grand Chamber decision), paras 176-177; *McCann and others v UK* (2008) 47 EHRR 40 (App No 18984/91) (Grand Chamber decision), paras 148-150. Some have questioned the compatibility of self-defence in England and Wales with article 2 of the ECHR: see A Ashworth, "Self-defence and the Right to Life" (1975) 34 *Cambridge Law Journal* 272; F Leverick, "Is English Self-defence Law Incompatible with Article 2 of the ECHR?" [2002] *Criminal Law Review* 347.

HOMICIDE LAW AND VICTIMS OF DOMESTIC ABUSE WHO KILL THEIR ABUSERS

3.74 As explained above at paragraph 1.11, our review of defences for victims of domestic abuse who kill their abusers has been subsumed within the homicide review, which will allow us to consider holistically how homicide law operates in relation to this category of defendants.

3.75 In this section, we have grouped together issues that arise specifically in cases where a victim of domestic abuse kills their abuser. However, generally such issues intersect with all three strands and therefore we refer to them also in other places throughout this Call for Evidence, when relevant to the discussion of other issues within homicide law. The discussion focuses on cases of *domestic* abuse. We will consider other forms of abuse, if relevant, as part of the general review of homicide. In the discussion in our Background Paper of modern understandings of domestic abuse, we observed that "domestic abuse" is

> a general term that includes abuse between intimate partners and relatives. This captures various dynamics, such as current and previous intimate partners, those with a parental relationship with the same child, and carers and recipients of care.[88]

3.76 The term "domestic homicide" is used below to refer to a homicide offence (either murder or manslaughter) that occurred in the context of, or in connection with, domestic abuse.

The existing law

3.77 When a victim of domestic abuse reacts by killing the perpetrator of the abuse, the legal position of the victim and perpetrator can become complicated. For clarity, we use the following terminology:

(1) before the homicide: "perpetrator of abuse" and "victim of abuse";

(2) after the homicide: "defendant" (victim of abuse before the homicide) and "the deceased" (perpetrator of abuse before the homicide).[89]

3.78 There is no bespoke homicide offence applicable to a defendant who killed the perpetrator of abuse. The defendant is charged with either murder or manslaughter, depending on the circumstances of the case.

3.79 Similarly, there is no bespoke defence available to a defendant in such cases. A defendant may rely on partial defences to murder (loss of control or diminished responsibility) and full defences (for example, self-defence). Although not a defence, a defendant may also argue that they did not possess the mental element for murder (intention to cause death or grievous bodily harm).

---

88 Defences for victims of domestic abuse who kill their abusers, Background Paper (10 December 2024), p 4.

89 In line with the terminology we used in our Background Paper: Defences for victims of domestic abuse who kill their abusers, Background Paper (10 December 2024), p 3.

3.80 In sum, the law of substantive homicide offences and defences treats a defendant who killed the perpetrator of domestic abuse in the same way as any other defendant who has caused the death of a person.

3.81 A definition of "domestic abuse" is found in the Domestic Abuse Act 2021. The definition applies where A and B are 16 or over and "personally connected" to each other (for instance, current or former intimate partners or relatives).[90] Children who are related to A or B and see, hear or experience the effect of the domestic abuse fall within the definition of victims of abuse.[91] Behaviours are abusive if they consist of any of the following:[92]

(a) physical or sexual abuse;

(b) violent or threatening behaviour;

(c) controlling or coercive behaviour;[93]

(d) economic abuse; or

(e) psychological, emotional or other abuse.

The Independent Review of Domestic Homicide Sentencing

3.82 In March 2023 the findings of the Independent Review of Domestic Homicide Sentencing undertaken by Clare Wade KC ("Wade Review") were published. The scope of the review was not limited to cases where a victim of domestic abuse kills their abuser, but included also cases where a perpetrator of domestic abuse kills the victim of abuse.[94] The Wade Review made recommendations to amend the statutory sentencing framework for murder and the sentencing guidelines for manslaughter to include considerations relevant to cases of domestic homicide. The Government accepted some of the sentencing recommendations and asked us to review the defences available to victims of domestic abuse who kill their abusers.[95]

3.83 Among the recommendations implemented following the Wade Review, a mitigating factor was added in Schedule 21 to the Sentencing Code in cases where a defendant kills their abuser and

---

90 Domestic Abuse Act 2021, ss 1(2)(a) and 2.

91 Above, s 3.

92 Above, s 1(3).

93 The law criminalises controlling or coercive behaviour in an intimate or family relationship. Under section 76 of the Serious Crime Act 2015, as amended by the Domestic Abuse Act 2021, any individual who is "personally connected" to the perpetrator can be a victim of the offence. The controlling or coercive behaviour by A towards B must have had a "serious effect" either by: causing B to fear "on at least two occasions" that violence will be used against them, or by causing B "serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities". A must also have known or ought to have known that their behaviour would have a "serious effect" on B.

94 Clare Wade KC's Independent Review of Domestic Homicide Sentencing (March 2023), pp 104 to 106.

95 Ministry of Justice, *Government Response to the Independent Review by Clare Wade KC* (July 2023) CP 872.

the victim had repeatedly or continuously engaged in behaviour towards the offender that was controlling or coercive and, at the time of the behaviour, the victim and the offender were personally connected within the meaning of section 76(6) to (7) of the Serious Crime Act 2015.[96]

3.84 An aggravating factor was also added in cases where a defendant has used "sustained and excessive violence towards the victim" (so-called "overkill"), which is however applicable to any murder.[97]

Problems with the existing law

3.85 There has been widespread criticism of the way existing homicide law operates in cases where a victim of domestic abuse kills their abuser. The thrust of such criticism is that homicide law, and in particular partial defences to murder and full defences, fail to acknowledge the situation of vulnerability of (mostly female) victims of domestic abuse who kill their (mostly male) abusers, reflecting gendered social constructions and stereotypes.[98]

3.86 Regarding partial defences to murder, we explained above that loss of control and diminished responsibility have been widely criticised for their stricter requirements, which may make it more difficult for any defendant to rely on either defence.[99] The Centre for Women's Justice ("CWJ") reported that women who kill tend to rely on partial defences rather than full defences, more often submitting guilty pleas to manslaughter rather than risking going to trial. They observed that such pleas are problematic in that they are based on "systemic disincentives" embedded in the law (such as the stakes of going to trial and giving evidence, together with the risk of being subject to the mandatory life sentence and being labelled a murderer). Additional obstacles to the use of self-defence arise from possible problems with the defendant's memory brought on by a traumatic response or use of medication, which may generate a perception in the jury that the defendant's account of the facts is inconsistent or even untruthful.[100]

3.87 While one of the aims of the reform of provocation (now loss of control) was to accommodate cases where a victim of domestic abuse kills their abuser, notably by removing the requirement that loss of control must be "sudden and temporary",[101] critics have observed that the reformed defence continues to prove ineffective for this category of defendants. For instance, the retention of the requirement of "loss of self-control", in contrast to its recommended abolition by the Law Commission, has been criticised for favouring traditional masculinist reactions over considerations of the

---

96 Schedule 21 to the Sentencing Code, para 10(ca), as amended by the Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2024, reg 4. In the opposite situation, it is an aggravating factor that the defendant has killed the victim after having engaged in repeated and continuous controlling or coercive behaviour towards the victim: see para 9(ba).

97 Schedule 21 to the Sentencing Code, para s 9(fa), as amended by the Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2024, reg 3(c).

98 We referred briefly to this line of critique in the section on partial defences: see para 3.31.

99 See above from para 3.24 to 3.27.

100 CWJ, *Women Who Kill: How The State Criminalises Women We Might Otherwise Be Burying* (2021), p 140.

101 See discussion above at para 3.32.

abused women's state of mind before the killing, which cannot always be described simply in terms of anger or fear. Other elements of the defence have been deemed inadequate, such as the assessment of reasonableness by reference to an ideal reaction of a person with a "normal degree of tolerance and self-restraint" to which an abused woman might not necessarily conform.[102]

3.88 The Wade Review summarised the lingering problem with the reformed loss of control:

> The law was enacted before coercive control became part of our legal discourse and without any reference to the power/control and entrapment principles which have followed the promulgation of Evan Stark's work which constructs coercive control as a crime against liberty. The 'crime of passion' narrative which still dominates societal thinking is entirely inconsistent with a response to an extreme case of coercive control. This is notwithstanding the caveat in the legislation that the loss of control "does not need to be sudden" which was of course meant to accommodate the way in which women who had been subjected to long term domestic abuse sometimes responded by killing.[103]

3.89 Criticism has also been levelled against the reformed partial defence of diminished responsibility. A victim of abuse may be able to argue that the killing of their abuser was explained by an abnormality of mental functioning arising from a "recognised medical condition" (for example, PTSD as a result of the abuse). However, Professor Jo Miles noted that "commentators have long objected to a law which requires such defendants to plead their own mental illness to obtain mitigation, rather than offering them a defence which narrates a story of self-defence against unjustified violence".[104] Similarly, the Wade Review identified the main problem with the defence in the fact that "it pathologises a normal response to domestic abuse. Coercive control is a pattern of behaviour which evinces a predictable response on the part of the victim".[105] It added that psychiatrists may fail to recognise the interaction between a pattern of coercive control and psychiatric conditions.

3.90 Finally, a victim of domestic abuse who kill their abuser faces difficulties in relying on self-defence. A study conducted by the CWJ showed that women who kill their

---

102 The literature on the critique of the reformed defence of loss of control in such cases is vast. For more detailed insights, among many, see S Parsons, "The Loss of Control Defence – Fit for Purpose?" (2015) 79 *Journal of Criminal Law* 94; S S M Edwards "Anger and Fear as Justifiable Preludes for Loss of Self-control" (2010) 74 *Journal of Criminal Law* 223; 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* (2011) 79–96; N Wake, "Political Rhetoric or Principled Reform of Loss of Control? Anglo-Australian Perspectives on the Exclusionary Conduct Model" (2013) 77 *Journal of Criminal Law* 512.

103 Clare Wade KC's Independent Review of Domestic Homicide Sentencing (March 2023), para 9.5.6. The reference is to E Stark, *Coercive Control. How Men Entrap Women in Personal Life* (2007). For a discussion of coercive control and social entrapment, see our Defences for victims of domestic abuse who kill their abusers, Background Paper (10 December 2024).

104 J Miles, "The Coroners and Justice Act 2009: A 'Dog's Breakfast' of Homicide Reform" (2009) 10 *Archbold News* 6, 7.

105 Clare Wade KC's Independent Review of Domestic Homicide Sentencing (March 2023), para 9.6.2.

abusers are rarely acquitted on the grounds of self-defence.[106] Unless a victim of domestic abuse reacts to an unjustified threat from the abuser at the time of the killing, it is unlikely that their reaction will be considered reasonable and proportionate, thus meeting the requirements of self-defence.[107] The Wade Review noted that

> women predominantly use a knife or other weapon when they kill, and this tends to lead to the killing being perceived as disproportionate in the circumstances existing at the time. The focus is on the immediate as opposed to the context and background.[108]

3.91 Critics have argued that the current law of self-defence and its application do not take into account women's experiences of abuse and fail to understand the context in which a response in self-defence might occur. This is compounded by the presence of myths and stereotypes often held by jurors, including the widespread belief that a "reasonable" reaction of an abused woman should be to leave the relationship or find safety in some other way. In addition, assumptions that the use of a weapon in self-defence is as such disproportionate overlooks the reality that men are typically stronger than women.[109]

3.92 Concerns have also been raised that, while the so-called "householder defence" permits a defendant to use disproportionate force against a trespasser (albeit not "grossly" disproportionate force), generally the law does not allow an abused defendant to use disproportionate force against the abuser, unless the abuser was, or was believed to be, a trespasser when force in self-defence was used.[110] The Wade Review observed that it is women who are householders in common with their abusers (who therefore are not trespassers) who would be most in need of such a defence.[111]

3.93 In the context of domestic abuse and coercive control, some have noted the emergence of narratives aimed to shift the blame away from the perpetrator of abuse and towards the (deceased) victim of abuse. This is evident in cases of the so-called "rough sex defence", where a defendant may argue that they lacked the fault element

---

106 CWJ, *Women Who Kill: How The State Criminalises Women We Might Otherwise Be Burying* (2021). Of the 92 cases included in the study, 43% (n=40) were convicted of murder, 46% were convicted of manslaughter (n=42) and just 7% of women were acquitted (n=6).

107 We summarised the law of self-defence above from para 3.66.

108 Clare Wade KC's Independent Review of Domestic Homicide Sentencing (March 2023), para 9.3.1.

109 There is a large volume of scholarship on self-defence in these contexts. Among many, see S K Howes, K S Williams and H Wistrich, "Women who Kill: Why Self-defence Rarely Works for Women who Kill their Abuser" [2021] *Criminal Law Review* 945; S Edwards, "'Demasculinising' the Defence of Self-Defence, the "Householder" Defence and Duress" [2022] *Criminal Law Review* 111; N Wake, "Battered Women, Startled Householders and Psychological Self-Defence: Anglo-Australian Perspectives" (2013) 77 *Journal of Criminal Law* 433; A McColgan, "General Defences" in D Nicolson and L Bibbings (eds*), Feminist Perspectives on Criminal Law* (1999). See also the CWJ, *Making Self-Defence Accessible to Victims of Domestic Abuse Who Use Force Against Their Abuser: Learning from Reforms in Canada, New Zealand and Australia* (2023); Clare Wade KC's Independent Review of Domestic Homicide Sentencing (March 2023), paras 9.2.1 to 9.3.2.

110 N Wake, "Battered Women, Startled Householders and Psychological Self-Defence: Anglo-Australian Perspectives" (2013) 77 *Journal of Criminal Law* 433, 449-451.

111 Clare Wade KC's Independent Review of Domestic Homicide Sentencing (March 2023), para 9.4.5.

of the homicide offence because the killing was the result of "consensual rough sex gone wrong".[112] As Professors Jonathan Herring and Hannah Bows summarised,

> This history of killings in that context is littered with excuses such as 'she had an affair' or 'she kept nagging' or 'she was just so annoying' or now, 'she enjoyed rough sex.' So there is a long history of the law enabling men to use stories to justify their abuse. The 'rough sex defence' is the latest in long line of these.[113]

3.94 Some proposals have been made in recent years to address the inadequacies of the current law, including, but not limited to:

(a) the introduction of a partial defence of "self-preservation", applicable in cases falling short of other partial or full defences.[114] This option was explored by the Law Commission in the 2003 Consultation Paper on partial defences to murder, but it was abandoned in favour of a reform of the existing partial defences;[115]

(b) the introduction of a defence modelled on the existing defence of self-defence afforded to householders. This option would permit victims of domestic abuse who kill their abusers to use disproportionate (but not grossly disproportionate) force against their abuser;[116]

(c) the introduction of provisions which specify that the wider social context against which the killing has occurred (including a history of prior abuse or violence) may be evidentially relevant in support of a plea of self-defence, together with the abolition of the requirement that self-defence is applicable only where there was an *imminent* threat against the victim of domestic abuse who kills their abuser.[117]

---

112 H Bows and J Herring, "Getting Away with Murder? A Review of the Rough Sex Defence" (2020) 84 *Journal of Criminal Law* 525.

113 J Herring and H Bows, "Regulating Intimate Violence: Rough Sex, Consent and Death" (2021) 311 *Child and Family Law Quarterly* 10.

114 See, for example, Clare Wade KC's Independent Review of Domestic Homicide Sentencing (March 2023), para 9.4.11; N Wake, "Battered Women, Startled Householders and Psychological Self-Defence: Anglo-Australian Perspectives" (2013) 77 *Journal of Criminal Law* 433, 454-456.

115 Partial Defences to Murder (2003) Law Commission Consultation Paper No 173, paras 10.95 to 10.112. A similar defence, called "killing for preservation in an abusive domestic relationship" is found in the Queensland (Australia) criminal code, which reduces murder to manslaughter: Criminal Code 1899, s 304B.

116 CWJ, *Women Who Kill: How the State Criminalises Women We Might Otherwise Be Burying* (2021), pp 141-143.

117 The criminal law of some Australian states, such as Victoria, includes similar provisions, as well as a partial defence of excessive self-defence which, if successfully pleaded, reduces murder to manslaughter. For more details about the Australian jurisdictions, see CWJ, *Making Self-Defence Accessible to Victims of Domestic Abuse Who Use Force Against Their Abuser: Learning from Reforms in Canada, New Zealand and Australia* (2023); Clare Wade KC's Independent Review of Domestic Homicide Sentencing (March 2023), pp 15 to 18. See also N Caitlin and R Dioso-Villa, "Australia's Divergent Legal Responses to Women Who Kill Their Abusive Partners" (2023) 30 *Violence Against Women* 2275. For a proposal to introduce in England and Wales provisions modelled on the Victorian criminal law, see N Wake, "Battered Women, Startled Householders and Psychological Self-Defence: Anglo-Australian Perspectives" (2013) 77 *Journal of Criminal Law* 433.

The current review of homicide law

3.95 The Terms of Reference of our previously separate review of defences for victims of domestic abuse who kill their abusers specify that we will review the use of defences in domestic homicide cases in light of modern understandings of the effects of domestic abuse on victims, including but not limited to:

(1) whether the existing defences to murder, and arguments as to lack of requisite intent for murder, operate satisfactorily in the context of a defendant who has suffered domestic abuse;

(2) if not, whether reform of the existing defences or a new bespoke defence or defences are needed, while ensuring that reformed or new defences are appropriately limited, for example, to avoid unintended consequences for cases where the abuser has killed their victim;[118]

(3) the operation of the applicable rules of evidence, procedure, and ways that the defences are considered from the beginning of the police investigation up to and including at trial, in this context, and whether reform of such matters is needed.[119]

3.96 The review will include consideration of the impact of different victims' experience in light of modern understandings of domestic abuse, including but not limited to the victims' culture, religion, sexuality, disability, and migrant status.[120]

3.97 We will take into consideration the findings and the recommendations of the Wade Review of Domestic Homicide Sentencing, as well as the Government's response, as part of our review of the sentencing framework for murder.[121] We discuss the sentencing framework for murder in more detail in Chapter 4.

3.98 As we observed above, our broader review of homicide law will now not be limited to the operation of defences available to defendants who kill their abusers, but will also encompass the operation of substantive homicide offences and sentencing for murder in such cases.

---

118 We note here concerns that either a bespoke defence or offence for this group of defendants could in practice be utilised by other defendants, including perpetrators of abuse who kill their victim. In Victoria, Australia, an offence of "defensive homicide" under s 9AD of the Crimes Act 1958 was introduced to recognise the particular circumstances of victims of abuse who kill. It was repealed in 2014 following "a widely held perception that it was being abused by violent men": see M Ulbrick, A Flynn and D Tyson, "The abolition of defensive homicide: a step towards populist punitivism at the expense of mentally impaired offenders" (2016) 40 *Melbourne University Law Review* 324.

119 Terms of Reference of the project on defences for victims of domestic abuse who kill their abusers.

120 We discussed these issues in our Defences for victims of domestic abuse who kill their abusers, Background Paper (10 December 2024).

121 Our review is limited to the sentencing framework for murder set out in Schedule 21 to the Sentencing Code, as per our Terms of Reference. The Wade Review also contains recommendations regarding manslaughter. However, the sentencing guidelines for manslaughter, which fall under the remit of the Sentencing Council, are outside the scope of our review of homicide.

Issue 12.

3.99 We invite evidence on the operation of substantive homicide offences, partial and full defences, and sentencing for murder in cases where victims of domestic abuse kill their abusers.

3.100 We invite evidence on understandings of domestic abuse and their impact on victims, as relevant to our review of homicide law.

Chapter 4: The sentencing framework for murder

INTRODUCTION

4.1 The third strand of our project concerns a review of the sentencing framework for murder.

4.2 Our Terms of Reference clarify the scope of our review, which will include, but is not limited to:

- a complete review of Schedule 21 to the Sentencing Code (Determination of minimum term in relation to mandatory life sentence for murder etc), and other relevant legislation where necessary to conduct that review;
- the operation of the statutory starting points and aggravating and mitigating factors, and the impact these have on the sentencing exercise;
- the extent to which the framework adequately reflects a modern understanding of culpability where murder is committed within a domestic context; and
- whether the framework is logically presented, easy to navigate and enables consistent sentencing outcomes.

4.3 Some issues are expressly excluded from the scope of our review. First, we will not consider the sentencing guidelines for manslaughter, which remain the responsibility of the Sentencing Council.[1]

4.4 Secondly, our review will assume:

(1) the continuing existence of the mandatory life sentence for murder (or the most serious form of murder if a tiered structure for the offence is recommended);

(2) that the sentencing framework for the mandatory life sentence will continue to be set out in primary legislation.

SENTENCING OF MURDER

The existing law

4.5 Murder carries a mandatory sentence of imprisonment for life.[2] This means that the sentencing judge has no discretion to impose a lower or different sentence. However, an offender convicted of murder rarely spends the rest of their life in prison.[3] The role

---

1 However, as we noted at para 1.24, any recommendations we make may have consequences for the relevant sentencing guidelines, and therefore we intend to work closely with the Sentencing Council, as agreed between the Commission and the Chief Executive of the Sentencing Council.

2 Murder (Abolition of Death Penalty) Act 1965, s 1(1).

3 We use the word "offender" in relation to sentencing, as opposed to "defendant", to reflect the fact that the individual has been found guilty and therefore their criminal liability has been established.

of the sentencing judge is to set the minimum term (sometimes called the "tariff"), that is the minimum period of time that the offender is required to serve in prison before an application for release might be considered by the Parole Board. If the Parole Board is satisfied that detention of the offender is no longer necessary for the protection of the public, the offender will be released on licence. The offender will be on licence for the rest of their life and can be recalled to prison if they re-offend or otherwise breach their conditions of parole.

4.6 The only exception to these rules is where the judge makes a "whole life order". These are relatively rare and are reserved for murders where the culpability of the offender is exceptionally high. In such a case, the offender must spend the rest of their life in prison and never becomes eligible to apply for release on licence.[4]

4.7 Murder is the only criminal offence whose guidelines for sentencing are set out in statute under the remit of Parliament, rather than in the sentencing guidelines under the remit of the Sentencing Council.

4.8 The statutory framework for murder is set out in Schedule 21 to the Sentencing Code ("Schedule 21").[5] Schedule 21 contains provisions to guide the judge in determining the "starting points" of the minimum term. The starting points applicable to adult offenders are the following:

(1) whole life order: when the seriousness of the offence is "exceptionally high" and the offender was aged 21 or over at the time of the offence. Cases falling under this category include: murder of two or more people where each murder involves a substantial degree of premeditation or planning, or the abduction of the victim, or sexual or sadistic conduct; murder of a child involving abduction or sexual or sadistic motivation; murder of a police or prison officer on duty; murder motivated by political, religious, racial or ideological cause; a previous conviction of murder;[6]

(2) starting point of 30 years: when the seriousness of the offence is "particularly high" and the offender was aged 18 or over at the time of the offence. Cases falling under this category are, for example, murder involving the use of a firearm or explosive, committed for gain, intended to interfere with the course of justice, aggravated by racial or religious hostility, or by hostility related to sexual orientation, disability or transgender identity;[7]

(3) starting point of 25 years: when the seriousness of the offence is "sufficiently serious" and the offender was aged 18 or over at the time of the offence. Under this category are cases where the offender took a knife or other weapon to the

---

4 However, the Secretary of State for Justice may release a prisoner on compassionate grounds: see Crime (Sentences) Act 1997, s 30. The issue has been litigated before the ECtHR: see below at para 4.27.

5 Prior to the Sentencing Act 2020, Schedule 21 was originally introduced in the Criminal Justice Act 2003. The Sentencing Act 2020, which contains the Sentencing Code, consolidated almost all sentencing provisions, following the Law Commission's recommendations: see The Sentencing Code Volume I: Report (2018) Law Com No 382.

6 Schedule 21, para 2.

7 Above, para 3.

scene intending to commit any offence or have it available to use as a weapon and used it in committing the murder;[8]

(4) starting point of 15 years: a residual category when the offender was aged 18 or over at the time of the offence and the case does not fall under the previous categories.[9]

4.9 There are different starting points applicable for offenders who were aged, respectively, 17, 15 to 16, or 14 and under when they committed the offence.[10]

4.10 Once the judge has chosen the starting point, they should take into account any aggravating or mitigating factors, and any time spent on remand or on bail, in order to arrive at the determination of the minimum term (or in making a whole life order).[11]

4.11 Aggravating factors include: planning or premeditation; the vulnerability of the victim due to age or disability; previous controlling or coercive behaviour towards the victim; mental or physical suffering inflicted on the victim before death; abuse of position of trust; use of duress or threats against another person to facilitate the murder; the fact that the victim was performing a public service or public duty; the use of sustained and excessive violence towards the victim; concealment, destruction or dismemberment of the body.[12]

4.12 There are additional aggravating factors (not specific to murder) that the judge must consider which are set out in the Sentencing Code, such as the existence of previous convictions (of any crime) and the fact that the crime was committed when the offender was released on bail.[13]

4.13 Mitigating factors include: the intention to cause serious bodily harm, rather than to kill; lack of premeditation; the offender's mental disorder or disability; the victim's previous controlling or coercive behaviour towards the offender; provocation (not amounting to a defence of provocation); any extent of self-defence or fear of violence; mercy killing; the age of the offender.[14]

4.14 The Court of Appeal has clarified that Schedule 21 "does not seek to identify all the aggravating and mitigating factors, it merely provides relevant examples".[15]

---

8 Schedule 21, para 4.

9 Above, para 5.

10 Above, paras 5(A) and 6.

11 Above, para 7. Paragraph 8 specifies that "detailed consideration of aggravating or mitigating factors may result in a minimum term of any length (whatever the starting point), or in the making of a whole life order". See also Sentencing Code, s 322(2)(b).

12 Schedule 21, para 9. These factors should be taken into account if not already considered in the determination of the starting point.

13 Respectively, ss 65(2) and 64 of the Sentencing Code.

14 Schedule 21, para 10.

15 *R v Last* [2005] EWCA Crim 106, [2005] 2 Cr App R (S) 64, at [18].

4.15 The sentencing judge retains discretion to determine the minimum term "as the court considers appropriate".[16] The Court of Appeal has repeatedly stressed that it is also within the judge's discretion to depart from a starting point under Schedule 21, because "justice cannot be done by rote"[17] and therefore a judge "is free not to follow the guidance if in his opinion this will not result in an appropriate term for reasons he identifies".[18]

4.16 Schedule 21 has been amended many times.[19] With the latest amendments, the Government has added aggravating and mitigating factors in cases of controlling or coercive behaviour, as a result of the Wade Review's recommendations which we have discussed above from paragraph 3.82.

Problems with the existing law

4.17 The sentencing framework for murder has attracted considerable criticism from academics, the judiciary, criminal practitioners and the Ministry of Justice.[20]

4.18 A Ministry of Justice report in 2010 noted that Schedule 21 is

> based on ill-thought out and overly prescriptive policy. It seeks to analyse in extraordinary detail each and every type of murder. The result is guidance that is incoherent and unnecessarily complex, and is badly in need of reform so that justice can be done properly in each case.[21]

4.19 Academic criticism has focused on the incoherence of minimum terms and aggravating factors, the piecemeal amendments to the sentencing framework throughout the years, the lack of proportionality in relation to the blameworthiness of offenders, and has questioned the penological principles underpinning the framework.[22]

4.20 Some have criticised the equivalence of some conduct in the starting points. For example, Professor Mitchell queried whether the murder of a police or prison officer is really as serious as a murder of more than one person, especially when there is substantial premeditation and planning, or the abduction of the victim, or sexual and sadistic conduct; or whether a murder motivated by political, religious, racial or

---

16 Sentencing Code, s 322(2).

17 *R v Peters and others* [2005] EWCA Crim 605, [2005] 2 Cr App R (S) 101, at [5].

18 *R v Sullivan* [2004] EWCA Crim 1762, [2005] 1 Cr App R 3, at [16].

19 The Lord Chancellor may amend Schedule 21 by regulations. Before making regulations, the Lord Chancellor must consult the Sentencing Council and regulations are subject to the affirmative resolution procedure (approval by both Houses of Parliament): see Schedule 23 to the Sentencing Code, para 19.

20 We will not discuss here the critique of the justification for the mandatory life sentence for murder, since the Terms of Reference for this project are premised upon its continued existence.

21 Ministry of Justice, *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders* (December 2010) Cm 7972, para 170. At that time, Schedule 21 was part of the Criminal Justice Act 2003.

22 For a helpful overview of these lines of criticism, see R Martin, *Sentencing for Murder. A Review of Policy and Practice* (Sentencing Academy 2024), pp 17 to 20. See also, among many: D Jeremy, "Sentencing Policy or Short-term Expediency?" [2010] *Criminal Law Review* 593; A Ashworth, "The Struggle for Supremacy in Sentencing" in A Ashworth and J V Roberts (eds), *Sentencing Guidelines: Exploring the English Model* (2013), p 21.

ideological cause should be treated as more serious than a murder with the use of explosives.[23] Professor Julian Roberts and Sir John Saunders made similar observations, arguing that when the starting points are inconsistent with proportionality, it is much harder for minimum terms to conform to the principle that murders of roughly comparable seriousness should attract sentences of roughly comparable severity.[24]

4.21 The starting point of 25 years added in 2010 applicable to cases where the offender "took a knife or other weapon to the scene"[25] and used it to commit murder has been the object of much criticism, especially in cases where a victim of domestic abuse kills their abuser. First, there is potential for injustice in distinguishing arbitrarily between cases where an offender has brought a knife or other weapon to the scene in order to kill (starting point of 25 years) and cases where an offender has found a knife already on the scene (for example, in the kitchen) and used it to kill. Secondly, the meaning of "the scene" is problematic (for example, is a knife in a drawer, or in another room, at "the scene"?).[26] The Wade Review recommended that the starting point of 25 years which applies where a knife or other weapon was taken to the scene should be disapplied in cases of domestic murder "because it denotes a starting point in which the vulnerability of the victim is not given any consideration".[27] The Government did not accept the recommendation, arguing that it would create an unjust disparity in the application of sentences, which would depend on the nature of the connection between the victim and the perpetrator.[28]

4.22 Concerns have also been raised that (mostly female) victims of domestic abuse who kill their abusers are often subjected to sentences which appear disproportionately long in relation to their culpability due to different factors, including lack of understanding of domestic abuse and coercive control, the 25-year starting points in cases where a knife or other weapon was brought to the scene and the difficulty in relying on defences. Conversely, sentences received by (mostly male) abusers who kill their victims of abuse often do not appear to reflect the seriousness of the offence.[29]

4.23 Legal practitioners have also been critical of the sentencing framework for murder. Twenty-six judges and barristers interviewed by Professor Kate Fitz-Gibbon have

---

23 B Mitchell, "Identifying and Punishing the More Serious Murders" [2016] *Criminal Law Review* 467, 469.

24 J V Roberts and J Saunders, "Sentencing for Murder: The Adverse and Unintended Effects of Schedule 21 to the Criminal Justice Act 2003" (2020) 10 *Criminal Law Review* 900, 904.

25 Schedule 21, para 4(2).

26 Examples taken from *R v Kelly and others* [2011] EWCA Crim 1462, [2012] 1 WLR 55. For a critique of the provision and of the Court of Appeal's attempt to clarify its scope in *R v Kelly*, see J Bild, "Kelly and the 25 Year Starting Point" (2011) 9 *Archbold Review* 7.

27 Clare Wade KC's Independent Review of Domestic Homicide Sentencing (March 2023), recommendation 3, para 7.1.13. We discussed the Wade Review above from para 3.82.

28 Ministry of Justice, *Government Response to the Independent Review by Clare Wade KC* (July 2023) CP 872, p 16.

29 Joint letter to the Lord Chancellor by the Domestic Abuse Commissioner and the Victims' Commissioner in 2021. See also CWJ, *Women who Kill: How the State Criminalises Women We Might Otherwise be Burying* (2021); and Clare Wade KC's Independent Review of Domestic Homicide Sentencing (March 2023), paras 4.3.3 to 4.3.7 and Appendix D.

observed that Schedule 21 is too restrictive and that the starting points are motivated by penal populism driven by tough-on-crime policies.[30]

4.24 The Court of Appeal too has criticised Schedule 21 on a number of occasions. For example, it held that the starting points can "present a sentencer with considerable difficulties in his quest to match the penalty to the infinitely variable circumstances of crime"[31] and that Schedule 21 appears "an overly prescriptive, unnecessarily complex, and, on occasions, wholly artificial, apparently all embracing, statutory framework".[32]

4.25 As discussed above, over the years the Court of Appeal has applied the sentencing framework more flexibly, and has said that the starting points

> must not be used mechanistically so as to produce, in effect, three [now four] different categories of murder. Full regard must be had to the features of the individual case so that the sentence truly reflects the seriousness of the particular offence.[33]

4.26 Noting the great difference between starting points, it emphasised that they "provide a very broad framework for the sentencing exercise. They are so far apart that it will often be impossible to divorce the choice of starting point from the application of aggravating and mitigating factors".[34]

4.27 Finally, whole life orders have been the object of human rights litigation before the ECtHR. In 2013, the Grand Chamber found that whole life orders violated article 3 of the ECHR (prohibition of inhuman or degrading treatment or punishment), since there was no prospect of early release and rehabilitation.[35] However, in 2017 the Grand Chamber accepted that the Secretary of State for Justice's power of compassionate release is sufficient to ensure compliance with article 3, because whole life orders are in fact reducible, albeit in exceptional circumstances.[36]

Public perceptions of sentencing for murder

4.28 Recently, the House of Commons Justice Committee noted the gap between public perceptions of sentencing for murder and the reality. Despite the steady increase in maximum sentences for a number of offences (including minimum terms for murder sentences), there has been a perceptible hardening of public opinion towards serious

---

30 K Fitz-Gibbon, "Minimum Sentencing for Murder in England and Wales: A Critical Examination 10 Years After the Criminal Justice Act 2003" (2016) 18 *Punishment and Society* 47. On similar issues, see also D Thomas, "Sentencing Murder: The Minimum Term" [2008] *Criminal Law Review* 904.

31 *R v Griffiths and others* [2012] EWCA Crim 2822, [2013] 2 Cr App R (S) 48, at [15].

32 *R v Kelly and others* [2011] EWCA Crim 1462, [2012] 1 WLR 55, at [9].

33 *R v Jones* [2005] EWCA Crim 3115, [2006] 2 Cr App R (S) 19, at [8].

34 Above, at [7].

35 *Vinter and others v UK* (2016) 63 EHRR 1 (App Nos 66069/09, 130/10 and 3896/10) (Grand Chamber decision).

36 *Hutchinson v UK* (App No 57592/08) (Grand Chamber decision). The ECtHR based its ruling on the clarification of the law provided by the Court of Appeal in *R v McLoughlin* [2014] EWCA Crim 188, [2014] 1 WLR 3964. For a critique of the judgment, see K Dzehtsiarou, "Is There Hope for the Right to Hope?" (*Verfassungsblog* 2017), https://verfassungsblog.de/is-there-hope-for-the-right-to-hope/ (last visited 30 May 2025).

crime since the 1990s.[37] For example, a survey conducted in 2023 showed that 55% of respondents thought that the starting point for murder of a child should be a whole life order and 42% thought that the same should apply for murder of an adult.[38]

4.29 The Sentencing Academy found evidence that the length of sentence for murder is not well understood by the public. The majority of respondents to a survey believed that offenders convicted of murder now spend shorter periods of time in prison before being released on licence.[39] The Sentencing Academy suggested that there is a clear relationship between public attitudes to sentence severity and knowledge of sentencing.[40]

The Independent Sentencing Review

4.30 One strand of criticism of the sentencing framework for murder is that it has led to an overall increase in the time offenders must serve in prison before their release on licence (minimum term inflation), with a knock-on effect on the overall length of custodial sentences passed for other criminal offences (sentence inflation).

4.31 In 2025, the Independent Sentencing Review chaired by The Rt Hon David Gauke ("Gauke Review") reported that the average length of the minimum term imposed for murder has risen from 12 years in 2000 to 21 years in 2021.[41] It also found that the statutory starting points have had an impact on wider sentencing and the prison population more broadly due to the inflation of sentence lengths for manslaughter and related offences against the person falling short of murder.[42]

4.32 Reviewing the history and trends in sentencing (not just for murder), the Gauke Review found that "tough on crime" political narratives prioritising punitive measures, a lack of strategic and evidence-based approaches as well as legislative changes such as the statutory framework for murder sentencing "have undeniably led to longer time spent in custody, and created a complex sentencing framework, generating a perception of confusion over sentencing and punishment for victims and offenders".[43]

4.33 The Gauke Review recommended that the "Law Commission's review of homicide law and sentencing (as commissioned by the Government) should look at the minimum

---

37 Public Opinion and Understanding of Sentencing, Report of the House of Commons Justice Committee (2022-23) HC 305, pp 3 and 33.

38 Above, pp 37-38.

39 J Roberts, J Bild, J Pina-Sanchez and M Hough, *Public Knowledge of Sentencing Practice and Trends: Research Report* (Sentencing Academy 2022), pp 8-9.

40 Above, p 14.

41 Independent Sentencing Review. Final Report and Proposals for Reform (May 2025), p 144. The findings are based on the Sentencing Academy's data.

42 Above, p 144. The findings are based on the Sentencing Council's response to the Call for Evidence in the review. For more details, see the separate study of the Sentencing Academy, "Sentence Inflation in England and Wales: What Are the Causes?" (2025) *Sentencing News* 4, 6. Other non-governmental organisations have highlighted the same trends over the past years, for example the Howard League for Penal Reform, *Sentence Inflation: A Judicial Critique* (2024).

43 Independent Sentencing Review. History and Trends in Sentencing (February 2025) p 21.

tariffs for sentencing for murder".[44] Minimum terms are indeed within the scope of our broader review of the sentencing framework for murder.

The 2006 Report

4.34 The scope of our previous review of murder, manslaughter and infanticide did not extend to the sentencing framework for murder. Like our current review of homicide law, the previous review assumed the existence of the mandatory life sentence for murder.[45]

4.35 Although we did not make recommendations on sentencing in the 2006 Report, our recommended three-tier structure would have an impact on sentencing for homicide offences. Within that structure, only first-degree murder would attract the mandatory life sentence, whereas second-degree murder and manslaughter would attract a discretionary life sentence. In practice, there is an argument that this could have resulted in a more limited reach of the mandatory life sentence, since some cases which are currently labelled "murder" would have been treated as "second-degree murder". However, we observed that the introduction of a middle tier would mitigate this concern, since the judge would be obliged to pass a custodial sentence for a second-degree murder which would be commensurately higher than that available if manslaughter would be the only other possibility.[46]

4.36 In addition, we stressed that Parliament should set out guidelines for sentencing in second-degree murder cases as part of a broader reform of the law.[47] We believed that life sentences would almost certainly continue to be a measure of first resort in many second-degree murders with aggravating features.[48]

The current review of homicide law

4.37 As we observed above, we will conduct a review of the sentencing framework for murder set out in Schedule 21, and other relevant legislation where needed.

4.38 Since Schedule 21 contains different provisions applicable to offenders aged, respectively, 21 or over, 18 or over and under 18, we invite evidence on the sentencing framework for murder in relation to each age group, including, but not limited to, the minimum terms, starting points, aggravating and mitigating factors and proportionality.

---

44 Independent Sentencing Review. Final Report and Proposals for Reform (May 2025), p 146.

45 See the Terms of Reference of the previous review. Some have criticised this assumption in our previous review: see the discussion above at para 2.16.

46 Murder, Manslaughter and Infanticide (2006) Law Com No 304, Appendix A, paras A.7 to A.10.

47 Above, para 1.61.

48 Above, Appendix A, paras A.11 to A.14.

Issue 13.

4.39 We invite evidence on the sentencing framework for murder in relation to offenders aged 21 and over.

Issue 14.

4.40 We invite evidence on the sentencing framework for murder in relation to offenders aged 18 to 20.

Issue 15.

4.41 We invite evidence on the sentencing framework for murder in relation to offenders aged under 18.

Chapter 5: List of issues

Issue 1.

5.1 We invite evidence on the advantages and disadvantages of the existing structure of homicide offences (a two-tier structure comprised of murder and manslaughter).

5.2 We invite evidence on the advantages and disadvantages of the structure of homicide offences that we recommended in 2006 (a three-tier structure comprised of first-degree murder, second-degree murder and manslaughter).

5.3 We invite evidence on possible alternative structures of homicide offences.

Paragraph 2.25

Issue 2.

5.4 We invite evidence on the use of the fault elements of existing homicide offences and any challenges they have raised in practice.

5.5 We invite evidence on the advantages and disadvantages of defining the fault elements of the existing homicide offences and on their possible definitions.

5.6 We invite evidence on the advantages and disadvantages of the definitions of the fault elements that we recommended in 2006.

Paragraph 2.44

Issue 3.

5.7 We invite evidence on any aspect of the law of complicity, as relevant to homicide offences, partial and full defences and the sentencing framework for murder.

Paragraph 2.71

Issue 4.

5.8 We invite evidence on the practice of prosecution and trial of "mercy" and consensual killings and on any relevant development in relation to these issues.

Paragraph 2.86

Issue 5.

5.9 We invite evidence on any aspect relevant to infanticide, including on how the offence and defence of infanticide currently operate in practice.

Paragraph 2.101

Issue 6.

5.10 We invite views on any additional issues relevant to substantive homicide offences, including offences of causing death, which should be considered within the scope of the review.

Paragraph 2.104

Issue 7.

5.11 We invite evidence on the operation of the partial defence of loss of control and any existing challenges.

Paragraph 3.46

Issue 8.

5.12 We invite evidence on the operation of the partial defence of diminished responsibility and any existing challenges.

Paragraph 3.47

Issue 9.

5.13 We invite evidence on the defence of duress, in particular on its possible application to homicide offences.

Paragraph 3.65

Issue 10.

5.14 We invite evidence on the challenges posed by the law of self-defence as relevant to homicide law.

Paragraph 3.70

Issue 11.

5.15 We seek consultees' views on whether full defences other than duress and self-defence should be included within the scope of our review of homicide law.

5.16 We invite evidence on the challenges posed by other full defences in relation to homicide law.

Paragraph 3.72

Issue 12.

5.17 We invite evidence on the operation of substantive homicide offences, partial and full defences, and sentencing for murder in cases where victims of domestic abuse kill their abusers.

5.18 We invite evidence on understandings of domestic abuse and their impact on victims, as relevant to our review of homicide law.

Paragraph 3.99

Issue 13.

5.19 We invite evidence on the sentencing framework for murder in relation to offenders aged 21 and over.

Paragraph 4.39

Issue 14.

5.20 We invite evidence on the sentencing framework for murder in relation to offenders aged 18 to 20.

Paragraph 4.40

Issue 15.

5.21 We invite evidence on the sentencing framework for murder in relation to offenders aged under 18.

Paragraph 4.41

References

We provide below a complete list of the sources used in the Call for Evidence.

ACADEMIC SOURCES

Ashworth A, “Self-defence and the Right to Life” (1975) 34 *Cambridge Law Journal* 272

Ashworth A, “Principles, Pragmatism and the Law Commission’s Recommendations on Homicide Law Reform” [2007] *Criminal Law Review* 333

Ashworth A, "The Struggle for Supremacy in Sentencing" in Ashworth A and Roberts J V (eds), *Sentencing Guidelines: Exploring the English Model* (2013)

Baker D, “Lesser Included Offences, Alternative Offences and Accessorial Liability” (2016) 80 *Journal of Criminal Law* 446

Bickle A, “Proposed Reforms to Partial Defences and Their Implications for Mentally Disordered Defendants” (2008) 1 *Journal of Mental Health Law* 38

Bild J, “Kelly and the 25 Year Starting Point” (2011) 9 *Archbold Review* 7

Bows H and Herring J, “Getting Away with Murder? A Review of the Rough Sex Defence” (2020) 84 *Journal of Criminal Law* 525

Brennan K and Milne E, “100 Years of Infanticide: The Law in Context” in Brennan K and Milne E (eds), *100 Years of the Infanticide Act; Legacy, Impact and Future Directions* (2023)

Caitlin N and Dioso-Villa R, “Australia’s Divergent Legal Responses to Women Who Kill Their Abusive Partners” (2023) 30 *Violence Against Women* 2275

Child J, “Exploring the Mens Rea Requirements of the Serious Crime Act 2007 Assisting and Encouraging Offences” (2012) 76(3) *Journal of Criminal Law* 220

Clarke B and Chadwick K, *Stories of Injustice: The Criminalisation of Women Convicted Under Joint Enterprise Laws* (2020)

Dell S, “Diminished Responsibility Reconsidered” [1982] *Criminal Law Review* 809

Dennis I, “Adjusting the Boundaries of Murder: Complicity” [2008] *Criminal Law Review* 923

Dressler J, “Battered Women Who Kill Their Sleeping Tormenters: Reflections on Maintaining Respect for Human Life While Killing Monsters” in Shute S and Simester A (eds), *Criminal Law Theory: Doctrines of the General Part* (2002)

Dzehtsiarou K, “Is There Hope for the Right to Hope?” (*Verfassungsblog* 2017)

Edwards S S M, “Anger and Fear as Justifiable Preludes for Loss of Self-control” (2010) 74 *Journal of Criminal Law* 223

Edwards S S M, “Loss of Self-control: When his Anger is Worth More than Her Fear’ in Reed A and Bohlander M (eds), *Loss of Control and Diminished Responsibility: Domestic, Comparative and International Perspectives* (2011)

Edwards S S M, “’Demasculinising’ the Defence of Self-Defence, the “Householder” Defence and Duress” [2022] *Criminal Law Review* 111

Elliott C and de Than C, “Restructuring the Homicide Offences to Tackle Violence, Discrimination and Drugs in a Modern Society” (2009) 20 *King’s Law Journal* 69

Fitz-Gibbon K, “Minimum Sentencing for Murder in England and Wales: A Critical Examination 10 Years After the Criminal Justice Act 2003” (2016) 18 *Punishment and Society* 47

Fortson R, “The Modern Partial Defence of Diminished Responsibility” in Reed A and Bohlander M (eds), *Loss of Control and Diminished Responsibility. Domestic, Comparative and International Perspectives* (2011)

Fortson R, “Partial Defences to Murder: Changed Landscape and Nomenclature” (2021) 72 *Northern Ireland Legal Quarterly* 171

Gibson M, “Diminished Responsibility in Golds and Beyond: Insights and Implications” [2017] *Criminal Law Review* 543

Herring J and Bows H, “Regulating Intimate Violence: Rough Sex, Consent and Death” (2021) 311 *Child and Family Law Quarterly* 10

Horder J, *Provocation and Responsibility* (1992)

Horder J and Hughes D, “Joint Criminal Ventures and Murder: The Prospects for Law Reform” (2009) 20 *King’s Law Journal* 379

Horder J, *Homicide and the Politics of Law Reform* (2012)

Horder J, “Issues in Reforming Homicide Law: the English Experience”: Seminar organised by the Scottish Law Commission on the Structure of Homicide and the Mental Element. (2018)

Horder J, “The Mandatory Sentence and the Case for Second-degree Murder” in Reed A, Bohlander M, Wake N, Engleby E and Adams V (eds), *Homicide in Criminal Law. A Research Companion* (2019)

Howes S K, Williams K S and Wistrich H, “Women who Kill: Why Self-defence Rarely Works for Women who Kill their Abuser” [2021] *Criminal Law Review* 945

Hulley S, “Defending ‘Co-offending’ Women: Recognising Domestic Abuse and Coercive Control in ‘Joint Enterprise’ Cases Involving Women and Their Intimate Partners” (2021) 60(4) *Howard Journal of Crime and Justice* 580

Ireland S, “Homicide Reform: Too Little, Too Soon?” (2008) 5 *JUSTICE Journal* 81

Jeremy D, “Sentencing Policy or Short-term Expediency?” [2010] *Criminal Law Review* 593

Kennefick L, “Introducing a New Diminished Responsibility Defence for England and Wales” (2011) 74 *Modern Law Review* 750

Krebs B (ed), *Accessorial Liability After Jogee* (2020)

Krebs B, “Written Jury Directions and Contributing to the Force of Numbers” (2020) 84 *Journal of Criminal Law* 172

Leverick F, “Is English Self-defence Law Incompatible with Article 2 of the ECHR?” [2002] *Criminal Law Review* 347

Mackay R, “Diminished Responsibility and Mentally Disordered Killers” in Ashworth A and Mitchell B (eds), *Rethinking English Homicide Law* (2000)

Mackay R, “The New Diminished Responsibility Plea: More than Mere Modernisation?” in Reed A and Bohlander M (eds), *Loss of Control and Diminished Responsibility. Domestic, Comparative and International Perspectives* (2011)

Mackay R, Mitchell B, “The New Diminished Responsibility Plea in Operation: Some Initial Findings” [2017] *Criminal Law Review* 18

Mackay R, “What’s Happening with the Reformed Diminished Responsibility Plea?” (2021) 72 *Northern Ireland Legal Quarterly* 224

McColgan A, “General Defences” in Nicolson D and Bibbings L (eds*), Feminist Perspectives on Criminal Law* (1999)

Miles J, “The Coroners and Justice Act 2009: A ‘Dog’s Breakfast’ of Homicide Reform” (2009) 10 *Archbold News* 6

Mitchell B, “Identifying and Punishing the More Serious Murders” [2016] *Criminal Law Review* 467

Norrie A, “After *Woollin*” [1999] *Criminal Law Review* 532

Ormerod D and Laird K, “*Jogee*: Not the End of a Legal Saga but the Start of One” [2016] *Criminal Law Review* 539

Ormerod D and Laird K, *Smith, Hogan, & Ormerod’s Criminal Law* (2021)

Parsons S, “The Loss of Control Defence – Fit for Purpose?” (2015) 79 *Journal of Criminal Law* 94

Quick O and Wells C, “Getting Tough with Defences” [2006] *Criminal Law Review* 514

Reed A and Bohlander M (eds), *Loss of Control and Diminished Responsibility. Domestic, Comparative and International Perspectives* (2011)

Reed A and Wake N, “Sexual Infidelity Killings: Contemporary Standardisations and Comparative Stereotypes” in Reed A and Bohlander M (eds), *Loss of Control and Diminished Responsibility. Domestic, Comparative and International Perspectives* (2011)

Reed A, Wake N, Simpsons B (guest eds), “Domestic and Comparative Perspectives on Loss of Self-control and Diminished Responsibility as Partial Defences to Murder: A 10-year Review of the Coroners and Justice Act 2009 Reform Framework (2021) 72 *Northern Ireland Legal Quarterly (Special Issue)* 161

Rix K, “Battered Woman Syndrome and the Defence of Provocation: Two Women with Something More in Common” (2001) 12 *Journal of Forensic Psychiatry* 131

Roberts J V, Saunders J, “Sentencing for Murder: The Adverse and Unintended Effects of Schedule 21 to the Criminal Justice Act 2003” [2020] *Criminal Law Review* 900

Rogers J, “The Law Commission’s Proposed Restructuring of Homicide” (2006) 70 *Journal of Criminal Law* 223

Rogers J, “The New Homicide Ladder” (2007) 157 *New Law Journal* 48

Simester A, *Fundamentals of Criminal Law: Responsibility, Culpability, and Wrongdoing* (2021)

Smith J C, “Commentary on *R v Woollin*” [1998] *Criminal Law Review* 890

Spencer J and Virgo G, “Encouraging and Assisting Crime: Legislate in Haste, Repent at Leisure” (2008) 9 *Archbold News* 7

Spencer J R, “Messing Up Murder” (2008) 8 *Archbold News* 5

Stark E, *Coercive Control. How Men Entrap Women in Personal Life* (2007).

Stark F, “Reckless Manslaughter” [2017] *Criminal Law Review* 767

Sullivan G R, “Complicity for First-degree Murder and Complicity in an Unlawful Killing” [2006] *Criminal Law Review* 502

Sullivan G R, Crombag H, Child J, “Loss of Control in the Appeal Courts” (2021) 72 *Northern Ireland Legal Quarterly* 200

Tadros V, “The Homicide Ladder” (2006) 69 *Modern Law Review* 601

Taylor R, “The Nature of ‘Partial Defences’ and the Coherence of (Second-degree) Murder” [2007] *Criminal Law Review* 345

Thomas D, “Sentencing Murder: The Minimum Term” [2008] *Criminal Law Review* 904

Ulbrick M, Flynn A and Tyson D, “The Abolition of Defensive Homicide: a Step towards Populist Punitivism at the Expense of Mentally Impaired Offenders” (2016) 40 *Melbourne University Law Review* 324

Wake N, “Battered Women, Startled Householders and Psychological Self-Defence: Anglo-Australian Perspectives” (2013) 77 *Journal of Criminal Law* 433

Wake N, “Political Rhetoric or Principled Reform of Loss of Control? Anglo-Australian Perspectives on the Exclusionary Conduct Model” (2013) 77 *Journal of Criminal Law* 512

Williams G, “The Theory of Excuses” [1982] *Criminal Law Review* 732

Wilson W, “The Structure of Criminal Defences” [2005] *Criminal Law Review* 371

Wilson W, “The Structure of Criminal Homicide” [2006] *Criminal Law Review* 471

Wilson W, “What’s Wrong with Murder?” (2007) 1 *Criminal Law and Philosophy* 157

Withey C, “Loss of Control, Loss of Opportunity?” [2011] *Criminal Law Review* 263

LAW COMMISSION

A New Homicide Act for England and Wales? (2005) Law Commission Consultation Paper No 177

Annual Report 2006-07 (2007) Law Com No 306

Criminal Appeals (2025) Law Commission Consultation Paper No 268

Criminal Liability: Insanity and Automatism, Discussion Paper (23 July 2013)

Defences for Victims of Domestic Abuse who Kill their Abusers, Background Paper (10 December 2024)

Inchoate Liability for Assisting and Encouraging Crime (2006) Law Com No 300

Involuntary Manslaughter (1996) Law Com No 237

Murder, Manslaughter and Infanticide (2006) Law Com No 304

Partial Defences to Murder (2003) Law Commission Consultation Paper No 173

Partial Defences to Murder (2004) Law Com No 290

Participating in Crime (2007) Law Com No 305

The Sentencing Code Volume I: Report (2018) Law Com No 382

GOVERNMENT

Home Office, *Reforming the Law on Involuntary Manslaughter: The Government’s Proposals* (May 2000)

Ministry of Justice and Home Office, *Murder, Manslaughter and Infanticide: Proposals for Reform of the Law* (July 2008) CP 19/08

Ministry of Justice, *Murder, Manslaughter and Infanticide: Summary of Responses and Government Position* (2009)

Ministry of Justice, *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders* (December 2010) Cm 7972

Ministry of Justice, *Report on the Implementation of Law Commission Proposals* (January 2011) HC 719

Ministry of Justice, *Government Response to the Independent Review by Clare Wade KC* (July 2023) CP 872

HOUSE OF COMMONS JUSTICE COMMITTEE

Post-legislative Scrutiny of Part 2 (Encouraging or Assisting Crime) of the Serious Crime Act 2007, Report of the House of Commons Justice Committee (2013-14) HC 639

Public Opinion and Understanding of Sentencing, Report of the House of Commons Justice Committee (2022-23) HC 305

CROWN PROSECUTION SERVICE

Crown Prosecution Service, *Suicide: Policy for Prosecutors in Respect of Cases of Encouraging and Assisting Suicide* (last update October 2014)

Crown Prosecution Service, *Consultation on Public Interest Guidance for Suicide Pact and 'Mercy Killing' Type Cases* (January 2022).

Crown Prosecution Service, *Joint Enterprise Pilot 2023: Data Analysis* (September 2023)

Crown Prosecution Service, *Prosecution Guidance on Homicide: Murder, Manslaughter, Infanticide and Causing or Allowing the Death or Serious Injury of a Child or Vulnerable Adult* (last update October 2024)

INDEPENDENT REVIEWS

Clare Wade KC, Independent Review of Domestic Homicide Sentencing (March 2023)

The Rt Hon David Lammy MP, Independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic Individuals in the Criminal Justice System (September 2017)

The Rt Hon David Gauke, Independent Sentencing Review. History and Trends in Sentencing (February 2025)

The Rt Hon David Gauke, Independent Sentencing Review. Final Report and Proposals for Reform (May 2025)

CIVIL SOCIETY

Cambridge Pro Bono Project, *The Law of Infanticide. A Preliminary Review of the UK Infanticide Act 1938* (2024)

Centre for Women's Justice, *Women who Kill: How the State Criminalises Women We Might Otherwise be Burying* (2021)

Centre for Women's Justice, *Making Self-Defence Accessible to Victims of Domestic Abuse who Use Force Against Their Abuser: Learning from Reforms in Canada, New Zealand and Australia* (2023)

Howard League for Penal Reform, *Sentence Inflation: A Judicial Critique* (2024)

Martin R, *Sentencing for Murder. A Review of Policy and Practice* (Sentencing Academy 2024)

Roberts J, Bild J, Pina-Sanchez J and Hough M, *Public Knowledge of Sentencing Practice and Trends: Research Report* (Sentencing Academy 2022)

Sentencing Academy, "Sentence Inflation in England and Wales: What Are the Causes?" (2025) *Sentencing News* 4

Waller N, *The Legal Dragnet. Joint Enterprise Law and Its Implications* (Centre for Crime and Justice Studies 2024)

UK COURTS

R v Adomako [1995] 1 AC 171

R v Ahluwalia [1992] 4 All ER 889

R v Chan-Fook [1994] 1 WLR 689

R v Challen [2019] EWCA Crim 916, [2019] *Criminal Law Review* 980

Chan Wing-Siu v The Queen [1985] AC 168

R v Clinton [2012] EWCA Crim 2, [2013] QB 1

R (Collins) v Secretary of State for Justice [2016] EWHC 33 (Admin), [2016] QB 862

R v Dawes, Hatter and Bowyer [2013] EWCA Crim 322, [2014] 1 WLR 947

R v Duffy [1949] 1 All ER 932

R v Golds [2016] UKSC 61, [2016] 1 WLR 5231

R v Gore [2007] EWCA Crim 2789, [2008] *Criminal Law Review* 388

R v Gotts [1992] 2 AC 412

R v Griffiths and others [2012] EWCA Crim 2822, [2013] 2 Cr App R (S) 48

R v Howe [1987] AC 417

R v Hussain and Hussain [2010] EWCA Crim 94, [2010] 2 Cr App R (S) 60

R v Inglis [2010] EWCA Crim 2637, [2011] 1 WLR 1110

R v Ireland [1998] AC 147

R v Jewell [2014] EWCA Crim 414

R v Jogee, Ruddock v The Queen [2016] UKSC 8, [2016] UKPC 7, [2017] AC 387

R v Jones [2005] EWCA Crim 3115, [2006] 2 Cr App R (S) 19

R v Kai-Whitewind [2005] EWCA Crim 1092, [2005] 2 Cr App R 31

R v Kelly and others [2011] EWCA Crim 1462, [2012] 1 WLR 55

R v Last [2005] EWCA Crim 106, [2005] 2 Cr App R (S) 64

R v Lidar [2000] 2 Cr App R 328

R v Lowe [1973] QB 702

R v Martin [2020] EWCA Crim 1798

R v Matthews [2003] EWCA Crim 192, [2003] 2 Cr App R 30

R v McLoughlin [2014] EWCA Crim 188, [2014] 1 WLR 3964

R v Moloney [1985] AC 905

R v Ness [2011] *Criminal Law Review* 645

R (Nicklinson) v Ministry of Justice [2014] UKSC 38, [2015] AC 657

R v Peters and others [2005] EWCA Crim 605, [2005] 2 Cr App R (S) 101

R (*Purdy) v DPP* [2009] UKHL 45, [2010] 1 AC 345

R v Rashford [2005] EWCA Crim 3377, [2006] *Criminal Law Review* 547

R v Rose [2017] EWCA Crim 1168, [2018] QB 328

R v Sadique and Hussain [2011] EWCA Crim 2872, [2012] 1 WLR 1700

R v Sullivan [2004] EWCA Crim 1762, [2005] 1 Cr App R 3

R v Thornton [1992] 1 All ER 306

R v Woollin [1999] AC 82

R v Z [2005] UKHL 22, [2005] 2 AC 467

EUROPEAN COURT OF HUMAN RIGHTS

Giuliani and Gaggio v Italy (2012) 54 EHRR 10 (App No 23458/02) (Grand Chamber decision)

Hutchinson v UK App No 57592/08 (Grand Chamber decision)

McCann and others v UK (2008) 47 EHRR 40 (App 18984/91) (Grand Chamber decision)

Vinter and others v UK (2016) 63 EHRR 1 (App Nos 66069/09, 130/10 and 3896/10) (Grand Chamber decision)