



## New CPS Domestic Homicide Guidance

“Last week saw the publication of new legal guidance by the CPS on prosecuting Domestic Homicide. An important step, brought about by extensive discussions with us, the family and friends of Joanna Simpson who was killed by her estranged husband in 2010. Despite preparing a grave beforehand, her killer could be acquitted of murder due to diminished responsibility. This verdict was undoubtedly in some small part because defences of this kind often run as a trial of character, and in ours, as in so many other trials of this kind, the defendant was free to assassinate the character of Jo, largely unchallenged by the prosecution.

What are the changes and why are they important?

This guidance requires far more extensive understanding and consideration of the history of domestic abuse, and critically a thorough investigation into the character of the defendant and the victim. It guards against acceptance of manslaughter pleas using the partial defences of diminished responsibility and loss of self-control. And it requires prosecutors to engage with expert witnesses (typically psychiatrists) on the broader profile of the defendant rather than just the psychiatric assessment of the defendant through interview.

If properly adopted this will have a significant impact on the quality of convictions in these crimes. Partial defences are commonly used in domestic homicide (our research showed it being used in 50% of cases). We talk a great deal about there being no excuses for domestic abuse, and yet when the worst happens the law provides exactly that. Of course, there are some great examples of prosecutions where past history and character has been very carefully and effectively considered. There are also examples where circumstances are such that a partial defence is entirely appropriate. This new guidance is designed to ensure those strong examples become the norm, and that partial defences are only used by the most deserving cases.

Partial defences run on the basis that the offender is not somehow responsible, and offenders who use it typically show little remorse and are in fact running a defence which says it was either because of their state of mind or the circumstances, often citing the character and actions of the victim as the reason for that. We found a diminished responsibility claim in domestic homicide cases is accepted at plea without a trial in just fewer than 50% of cases. Successful or not, victims families have to suffer trials or plea acceptance which often assassinate the character of the victim, poorly challenged by the prosecution. Where successful they are left with the incomprehensible sense that their loved one has not had a fair trial and the perpetrator has literally got away with murder. Our research showed that  $\frac{1}{4}$  of all convicted domestic homicide offenders were successful in a defence of this kind.

And what of disposal? The discount in tariff can be substantial and it is not unusual for those convicted of manslaughter to be released from custody within 5 years of the crime. Sometimes they get a hospital order and come under the mental health tribunal process, and again it is not unusual for them to be released within 3 years. It is notable to understand that where the perpetrator is the parent of bereaved children, they still retain parental rights. The repercussions



continue when the family courts look on access requests more favorably where the offender was found not guilty to murder.

So tightening the criminal justice system through this guidance to avoid exploitation of the loopholes in homicide is fundamental if we believe we should send the message that domestic abuse is unacceptable, if we believe dead victims and their families deserve fair access to justice, and critically if we want to protect the innocent child victims who live in fear of a violent perpetrator and deserve time to grow and repair in peace.