

Policing Men, Policing Women: Responsibility and Accountability for Violence Against Women and Girls, Including Domestic Abuse and Femicide

*Mandy Burton*¹

Abstract

Existing legal responses to violence against women and girls (VAWG) often focus on the behaviour of the victim as much as, or sometimes more than, that of the alleged perpetrator. The laws that are supposed to protect women and girls from abuse are used to 'police' the behaviour of women; access to remedies and redress can seem to be contingent on whether the victim has adhered to stereotypes of an 'ideal/real' or 'deserving' victim. Female victims of male violence, including femicide, are often judged for their own behaviour; what they 'ought' to have done to keep themselves safe. This 'responsibilisation' is evident in both the substantive law and in the implementation of the law in practice. This article will highlight some of the examples of victim blaming in existing legal responses to VAWG in England and Wales. It will consider the question: how can we focus less on victim behaviour and more on perpetrator responsibility and accountability? Jayne Cowie's book *After Dark* offers a useful lens for examining this question. The article will explore the parallels between some of the existing preventative measures for domestic abuse in England and Wales and some of the fictional measures enacted in Cowie's world, in particular cohabitation contracts and domestic violence disclosure schemes.

Keywords

Stereotyping, Victim Blaming, Responsibilisation, Accountability, Prevention

Introduction

Violence against women and girls (VAWG) is a significant social problem which also presents challenges for the legal system both in contributing to effective prevention and providing

¹ Mandy Burton, University of Leicester. Email: mandy.burton@leicester.ac.uk

Citation Format: Burton, M, 'Policing Men, Policing Women: Responsibility and Accountability for Violence against Women and Girls, Including Domestic Abuse and Femicide (2024) 3 *International Journal of Gender, Sexuality and Law* 31.

redress that unequivocally holds perpetrators to account. In England and Wales there is a government strategy for tackling VAWG,² and the police and prosecutors have specific policies in place for responding to VAWG.³ Domestic abuse, as a subset of VAWG, has its own sets of policies.⁴ The implementation of these policies is not straightforward, and research has shown that there is often a gap between the policies and the practices. One barrier to effective legal responses to VAWG is 'victim blaming' where the victim departs from the 'ideal/real' victim stereotype. In this article, the concept of victim blaming will be examined and the relationship with 'responsibilisation' explored. By examining examples of how the existing legal responses to VAWG focus on victims' behaviour, character and situation, obscuring perpetrator behaviour and responsibility, the need for a shift in the paradigm will become clear.

Jayne Cowie offers radical solutions for shifting the paradigm; in her 'world', curfews and tagging place the focus on men and older boys as perpetrators and potential perpetrators of violence and abuse. Public places should be safe 'After Dark' due to the curfew measure in the fictional Prevention of Femicide Act 2023. But the murder victim in Cowie's book is not killed by a stranger who leaps from a bush, she is a victim of domestic homicide, or femicide. Why have preventative measures like curfew not worked? Cass, a character in the book and one of the key critics of the measures in the Prevention of Femicide Act 2023, questions the logic of curfew as a measure to prevent domestic homicide. Cass points out that most women are killed by men they know not a random stranger on the street. To address this, Cowie's book also imagines preventive measures such as pre-cohabitation counselling and cohabitation contracts. This article will compare the cohabitation contracts proposed by Cowie to current domestic violence disclosure schemes (DVDS) in operation in England and Wales and some other jurisdictions. It will ask whether they are effective and whether they dismantle or perpetuate victim blaming culture. Are we still asking victims to keep themselves safe rather than focusing on perpetrator responsibility and accountability?

² Home Office, Tackling Violence Against Women and Girls Strategy (2021). Available at: <https://www.gov.uk/government/publications/tackling-violence-against-women-and-girls-strategy> (last accessed 14 June 2024).

³ The police, for example have the VAWG Toolkit on protection orders. Available at: <https://www.college.police.uk/guidance/violence-against-women-and-girls-toolkit> (last accessed 14 June 2024).

⁴ Individual police forces have their own force specific policies, and the College of Policing also issues general guidance, for example on the investigation of domestic abuse. Available at: <https://www.college.police.uk/app/major-investigation-and-public-protection/domestic-abuse> (last accessed 14 June 2024). For Crown Prosecution Service guidance for prosecutors, see <https://www.cps.gov.uk/legal-guidance/domestic-abuse> (last accessed 14 June 2024).

Domestic Abuse and Femicide

It is important to acknowledge, as Jayne Cowie's book *After Dark* does, that domestic abuse and domestic homicide are gendered issues. The statutory definition of domestic abuse in the Domestic Abuse Act 2021 in England and Wales does not make it clear that men are the primary perpetrators of domestic abuse and women are the primary victims, and this has been critiqued;⁵ however, research unequivocally demonstrates that this is the case.⁶ There is now also greater understanding that domestic abuse is not just physical violence but also 'coercive and controlling' behaviours,⁷ which may or may not include physical or sexual abuse.⁸ Perpetrators of coercive control do not need to use physical violence to achieve domination.⁹ Not all domestic abuse ends in homicide but, on average, two women a week are killed by a partner or former partner in England and Wales.¹⁰ A 'coercive and controlling' intimate relationship is often the background to these killings.¹¹ Sexually possessive men may kill in situations where coercive control was previously maintained by non-violent methods.¹² These killings of women by known men have often been inappropriately framed as 'crimes of passion',¹³ but this overlooks important research into why men kill,¹⁴ and the broader patriarchal structure underpinning and perpetuating domestic abuse.¹⁵ Bringing the patriarchy into focus has resulted in the term 'femicide' being adopted to more accurately describe the killing of women by men.¹⁶

⁵ C Bishop, 'Prevention and Protection: Will the Domestic Abuse Act Transform the Response to Domestic Abuse in England and Wales?' (2021) *Child and Family Law Quarterly* 163-183.

⁶ The Crime Survey in England and Wales (CSEW) demonstrates that gendered nature of domestic abuse; Office for National Statistics (ONS), *Domestic abuse, Victim Characteristics, England and Wales* (ONS, November 2023). This is not to say men are never victims, or that there is no abuse in LGBT relationships, but in terms of frequency and severity, women in heterosexual relationships are disproportionately affected. See, for example, RE and RP Dobash 'Women's Violence to Men in Intimate Relationships: Working on a Puzzle' (2004) 44(3) *British Journal of Criminology* 324-349.

⁷ E Stark, *Coercive Control: How Men Entrap Women in Personal Life* (OUP, 2007).

⁸ A Myhill and L Kelly, 'Counting with Understanding? What is at Stake in Debates on Researching Domestic Violence' (2021) 21(3) *Criminology and Criminal Justice* 280-296.

⁹ C Wiener, *Coercive Control and the Criminal Law* (Routledge, 2022).

¹⁰ ONS (2023), above n 6. Furthermore, there is a link between domestic abuse and suicidality; R Aitken and V Munro, *Domestic Abuse and Suicide* (University of Warwick and Refuge, 2018).

¹¹ J Monckton-Smith, *In Control: Dangerous Relationships and How They End in Murder* (Bloomsbury, 2021).

¹² M Wilson and M Daly, 'Sexual Rivalry and Sexual Conflict: Recurring Themes in Fatal Conflicts' (1998) 2(3) *Theoretical Criminology* 291-310.

¹³ This framing has been extensively critiqued. See, for example, A Howe and D Alaatinoglu, *Contesting Femicide; Feminism and the Power of Law Revisited* (Routledge, 2018).

¹⁴ Wilson and Daly, 'Sexual Rivalry and Sexual Conflict: Recurring Themes in Fatal Conflicts', n 11 above; RE Dobash and RP Dobash *When Men Murder Women* (OUP, 2015); H Johnson, I Eriksson, P Mazerolle, and R Wortley, 'Intimate Homicide: The Role of Coercive Control' (2019) 14(10) *Feminist Criminology* 3-23.

¹⁵ M Madden Dempsey, *Prosecuting Domestic Violence: A Philosophical Analysis* (OUP, 2009). Herring identifies intersections with other structural inequalities that perpetuate domestic abuse, however, does not minimise the role of gender inequality and patriarchy (J Herring, *Domestic Abuse and Human Rights* (Intersentia, 2020)).

¹⁶ J Radford and D Russell, (eds) *Femicide: The Politics of Woman Killing* (Macmillan, 1992); Howe and Alaatinoglu, *Contesting Femicide; Feminism and the Power of Law Revisited*, n 13 above.

In Cowie's book we see femicide discussed in the first paragraph. Pamela, one of the key characters, a police officer who served before the new regime, observes: 'behind every dead woman was a man who would swear that she was the love of his life...knife still firmly in his hand'.¹⁷ This is, or was pre curfew, an empirical reality. It is a reality which Rachel, a relatively new police officer, is not able to contemplate in a post curfew world. It is a reality which Sue Ferguson, from the specialist team that swoops in to supervise the investigation, is keen to cover up. Pamela tells us Sue's priority is information control not the victim.¹⁸ The message she wants to convey is that 'it's definitely a woman'¹⁹ responsible for the killing, even though the post-mortem suggests 'a man is more likely than even the strongest of women'.²⁰ For Sue, the priority is to reassure the public that the curfew and other measures in the fictional Prevention of Femicide Act 2023 'make a difference'²¹ and that they prevent men killing women. It is clearly implied by Cowie that this is not the first femicide that Sue has covered up. As the book unfolds, we learn that the body in the park is a woman, Helen, killed by her male cohabitee and that the measures in the Prevention of Femicide Act have in this instance failed. Why is it that legal systems, including the fictional one in Cowie's world, cannot prevent VAWG and femicide?

Jayne Cowie contextualises the gender differences in domestic homicide. She notes that the reasons women kill men are often not symmetrical to men. In response to the statistics on femicide, Cass exclaims 'Women killed men too!', to which Miss Taylor (Helen), replies 'Yes, they did, roughly one a month, but the pattern of offending was different. Women kill in self-defence, or because they have psychiatric problems. Men kill because they can'.²² The curfew legislation was brought in because a parliamentarian was killed by her male partner. Cass refers to him as 'one lunatic' who went onto kill four unknown women so that police would think he was a random stranger killer.²³ In the discussion below, it will be argued that in the existing defences to homicide it is female killers who are medicalised, labelled as 'mad'. Men can seek to persuade the jury that what they have done is objectively reasonable, that they are neither 'mad' nor really 'bad'. In this way, homicide defences 'responsibilise' women and fail to hold male perpetrators fully accountable.

¹⁷ J Cowie *After Dark* (Penguin, 2022), 1.

¹⁸ *ibid*, 99.

¹⁹ *ibid*, 102.

²⁰ *ibid*, 105.

²¹ *ibid*, 106.

²² *ibid*, 18.

²³ *ibid*, 19.

Policing Women: Victim Blaming and Responsibilisation

One barrier to the effective implementation of policies and laws designed to protect women and girls from abuse is 'victim blaming'.²⁴ The implicit assumption of victim blaming is that, as Esther Madiz expressed it, 'Nothing bad happens to good girls'.²⁵ Madiz described a 'dichotomy of victimhood' where victims are seen as either 'good/innocent' and 'deserving our tears' or 'bad/culpable' and not 'deserving',²⁶ with the 'good' victim mapping onto the 'ideal' victim hypothesised by Nils Christie.²⁷ Whilst victim blaming is not unique to blaming women for male violence and abuse, it has become a central theme in the understanding of the perpetration of male violence against women and girls.²⁸ In the 1990s, the barrister Helena Kennedy observed: 'blaming the victim is a constant experience for women in the courts'.²⁹ Despite sustained critique of legal responses to VAWG, three decades later she was still writing about the victim blaming paradigm.³⁰ Entrenched victim blaming impedes the criminal justice response to domestic abuse and sexual violence.

Rape cases are the classic site for victim blaming.³¹ The prosecution of rape in England and Wales, as in other jurisdictions, is notoriously difficult; few reported rape cases make it to charge and even fewer to conviction.³² One aspect of these difficulties is the persistence of 'rape myths'³³ which focus on the victim rather than perpetrator. Taylor observes: '[v]ictim blaming is generally split into behavioural, characterological and situational blame; however often they overlap'.³⁴ Thus, women are blamed for their behaviour (for example drinking, flirting

²⁴ The notion of 'victim blaming' is now well established in the sociological and criminal justice literature. Jess Taylor traces the term back to the 1970s when it was first used by William Ryan in the context of racial oppression (J Taylor, *Why Women are Blamed for Everything: Exposing the Culture of Victim Blaming* (Constable, 2020); W Ryan, *Blaming the Victim* (Penguin, 1971)).

²⁵ E Madiz, *Nothing Bad Happens to Good Girls* (University of California Press, 1997). Madiz analysed how fear of crime impacts women in their everyday lives and is one of the most powerful mechanisms of social control.

²⁶ *ibid*, 82.

²⁷ N Christie, 'The Ideal Victim' in E Fattah (ed) *From Crime Policy to Victim Policy: Reorientating the Justice System* (Spinger, 1986). Christie's work has been influential; see, for example, M Duggan (ed), *Revisiting the 'Ideal Victim': Developments in Critical Victimology* (Policy Press, 2018).

²⁸ Taylor, *Why Women are Blamed for Everything: Exposing the Culture of Victim Blaming*, n 24 above. See also J Taylor, *Sexy But Psycho: How Patriarchy Uses Women's Trauma Against Them* (Constable, 2023).

²⁹ H Kennedy, *Eve was Framed* (Penguin, 1992), 95.

³⁰ H Kennedy, *Eve was Shamed* (Penguin, 2018).

³¹ R Cowan, 'Asking For It' in R Killeen, E Dowds and AM McAlinden (eds), *Sexual Violence on Trial: Local and Comparative Perspectives* (Routledge, 2021).

³² K Kohl and B Stanko, 'Complaints of Rape and the Criminal Justice System: Fresh Evidence on the Attrition Problem in England and Wales' (2015) 12(3) *European Journal of Criminology* 324-341; K Kohl and B Stanko, 'Five Pillars: A Framework for Transforming the Police Response to Rape and Sexual Assault' (2022) 2 *International Criminology* 222-229.

³³ E Sleath and R Bull, 'Comparing Rape Victim and Perpetrator Blaming in a Police Officer Sample: Differences between Police Officers with and without Special Training' (2012) 39(5) *Criminal Justice and Behavior* 646-665; E Sleath and R Bull, 'A Brief Report on Rape Myth Acceptance: Differences between Police Officers, Law Students, and Psychology Students in the United Kingdom' (2015) 30(1) *Violence and Victims* 136-147.

³⁴ Taylor, *Why Women are Blamed for Everything: Exposing the Culture of Victim Blaming*, n 24 above, 16.

or wearing clothes that are 'too revealing'), for their character (for example perceived 'promiscuity'), and for the situation (being in the 'wrong' place, such as a public space after dark). 'Real' rape stereotypes are also founded on the myths that the 'ideal/real' victim fights back, is injured, reports immediately and is emotional (but not too emotional) at trial.³⁵ For those cases that make it to trial, multiple and recent studies demonstrate the impact of these victim blaming stereotypes on juror deliberations.³⁶ Relationship rape presents particular difficulties given the stereotype that 'real' rape involves a stranger rather than someone known to the victim.³⁷ Even research that is relatively dismissive of rape myths suggest that jurors could benefit from additional guidance on relationship rape.³⁸ How far rape myths impact on the test applied by prosecutors when deciding whether to take a case to trial is a contested matter,³⁹ but falls in prosecutions for rape in England and Wales raised concerns that prosecutors might be influenced by rape myths and victim blaming stereotypes.⁴⁰

As Taylor asserts: '[a]ll victim blaming minimises or erases the actions and choices of the offender from their own offence'.⁴¹ It is about making women responsible for their own safety, and if they 'fail' then they become 'responsible' for what happens to them, shifting responsibility and accountability from the perpetrator. In the sphere of rape prosecutions, recent initiatives are attempting to shift this victim blaming/responsibilisation paradigm. Following intensive scrutiny of the prosecution of rape in England and Wales,⁴² the Government has funded an innovative collaboration between the police and academics, Operation Soteria, building on project Bluestone.⁴³ Operation Soteria aims to improve charge and conviction rates and the victim/survivor experience of the criminal justice system. It is based on 'Five Pillars' for transforming the police response to rape and sexual assault. The first of these pillars is suspect focused investigations. As Kohl and Stanko explain, for too long

³⁵ L Ellison and V Munro 'A Stranger in the Bushes or an Elephant in the Room? Critical Reflections Upon Received Rape Myth Wisdom in the Context of a Mock Jury Study' (2010) 13(4) *New Criminal Law Review* 781-801.

³⁶ J Chalmers, F Leverick and V Munro, 'Why the Jury is, and still should be, Out on Rape Deliberation' (2021) *Criminal Law Review* 753-771.

³⁷ L Ellison and V Munro, "Better the Devil You Know? "Real Rape" Stereotypes and The Relevance of a Previous Relationship in (Mock) Juror Deliberation' (2013) 17(4) *International Journal of Evidence and Proof* 299.

³⁸ C Thomas, 'The 21st Century Jury: Contempt, Bias the Impact of Jury Service' (2020) *Criminal Law Review* 987-1011.

³⁹ It has been argued that prosecutors adopt a predictive test (based on juror stereotyping) instead of a 'merits based' approach. A judicial review against the Crown Prosecution Service (CPS) found that prosecutors were being instructed on the correct 'objective' approach (*EVAWG v DPP* [2021] EWCA Civ 350).

⁴⁰ EVAWG has expressed disappointment with the outcome of the judicial review; Available at: <https://www.endviolenceagainstwomen.org.uk/breaking-news-womens-groups-deeply-disappointed-by-judges-failure-to-hold-cps-accountable-on-rape-prosecutions-collapse> (last accessed 14 June 2024).

⁴¹ Taylor, *Why Women are Blamed for Everything: Exposing the Culture of Victim Blaming*, n 24 above, 27.

⁴² Home Office, *End to End Rape Review*. Available at: <https://www.gov.uk/government/publications/end-to-end-rape-review-report-on-findings-and-actions> (last accessed 14 June 2024).

⁴³ Kohl and Stanko, 'Complaints of Rape and the Criminal Justice System: Fresh Evidence on the Attrition Problem in England and Wales' n 32 above.

the police investigation of rape and sexual assault has focused on testing of victim credibility.⁴⁴ They argue that investigations must begin with the suspect: 'rather than focussing on the victim as the first and primary site of the investigation.'⁴⁵ Many victims of rape and sexual assault do not report to the police. Whilst the reasons for this are multi-faceted, one issue is that they may be made to feel responsible for what happened to them. Perpetrators may target vulnerable victims and exploit that vulnerability to silence them. In this way, Kohl and Stanko argue: '[v]ictim vulnerabilities have become a form of victim responsabilisation'.⁴⁶ Responsibilisation, making the victim feel responsible for their own safety, provides the framework for self-blame and non-reporting. Whereas Kohl and Stanko observe: '[s]uspect focused investigations require officers to move beyond the 'red herring' of victim credibility that arises from entrenched rape mythology and victim blaming and seeps into investigative strategies, lines of enquiry, case building, engagement with victim-survivors and suspects and decision making in the case'.⁴⁷

Whilst the prosecution of rape is one of the starkest illustrations of the criminal justice system perpetuating stereotypes that blame victims of male violence and responsabilise them, it is not the only example. Aspects of the substantive criminal law have also adopted this approach. The law relating to homicide historically contained defences which effectively blamed female victims of domestic homicide for their 'own demise'.⁴⁸ The old defence of provocation in English law has been written about extensively; it exemplifies shifting the blame from the perpetrator to the victim, particularly in the guise of the so-called sexual infidelity defence, which goes back many centuries.⁴⁹ The essence of the defence is that if a man kills in anger as a result of his female partner's alleged sexual infidelity then he is justified, or latterly excused, for his killing.⁵⁰ A shift in societal norms was accompanied by some legal change to the defence of provocation. The Homicide Act 1957, which contained the provocation defence, was interpreted by some judges around the turn of the millennium to exclude a defence based solely on obsessive (male) jealousy.⁵¹ Arguably, however, the victim blaming culture was

⁴⁴ *ibid.*

⁴⁵ *ibid.*, 225.

⁴⁶ *ibid.*

⁴⁷ *ibid.*

⁴⁸ S Edwards 'Provoking her own Demise'; From Common Assault to Homicide' in J Hanmer and M Maynard (eds), *Women, Violence and Social Control* (Palgrave Macmillan, 1987).

⁴⁹ M Burton, *Domestic Abuse, Victims and the Law* (Routledge, 2022), 148.

⁵⁰ J Horder, *Provocation and Responsibility* (OUP, 1992).

⁵¹ *R v Smith* [2000] 3 WLR 654.

softened but not dismantled because it quickly re-established itself in the sentencing of domestic homicide,⁵² and ultimately in the substantive law of provocation.⁵³

Some parliamentarians were keen to see the victim blaming culture dismantled and remove sexual infidelity as the basis of a defence for killing.⁵⁴ Amendments to the homicide defences were considered in the Safety and Justice consultation that preceded the Domestic Violence, Crime and Victims Act 2004, but ultimately did not make it into the Government's proposals and legislation.⁵⁵ It was not until the Coroners and Justice Act (CJA) 2009 that the provocation defence was abolished and replaced by a new loss of control defence, including a provision excluding sexual infidelity as a qualifying trigger for the defence.⁵⁶ At first it appeared that the sexual infidelity defence would no longer be available where the defendant was relying on the trigger of 'circumstances of an extremely grave character' causing him to have a 'justifiable sense of being seriously wronged'.⁵⁷ However, the moment of optimism that the victim blaming culture around femicide might shift was short lived. Judicial interpretation of the CJA 2009 in the case of *Clinton and others*,⁵⁸ meant that allegations of sexual infidelity could be raised as part of a package of allegations, provided they were not the sole qualifying trigger. It has been argued that male anger continues to be the privileged 'excusable emotional state'.⁵⁹ Aligned to this is a perpetuation of the victim blaming culture that responsabilises victims. If only she had not (allegedly) taunted him about his sexual prowess,⁶⁰ she would still be alive; he cannot be held fully responsible for her killing.

It could be argued that the sexual infidelity provision is gender neutral; that women can rely on it when they kill men just as much as men who kill women.⁶¹ However, this would be perceived neutrality rather than empirical reality or substantive equality because there are few cases where women seek to rely on sexual infidelity to blame male victims of domestic

⁵² *R v Suratan, Humes and Wilkinson* [2003] 2 Cr App R (S) 42. For a discussion of this case and other similar cases, see J Horder and K Fitz-Gibbon, 'When Sexual Infidelity Triggers Murder: Examining the Impact of Homicide Law Reform on Judicial Attitudes in Sentencing' (2015) 74 *Cambridge Law Journal* 307-328.

⁵³ *R v Weller* [2004] 1 Cr App R 1. See Burton, *Domestic Abuse, Victims and the Law*, n 49 above, 152.

⁵⁴ K Fitz-Gibbon, 'Replacing Provocation in England and Wales: Examining the Partial Defence of Loss of Control' (2013) 40(2) *Journal of Law and Society* 280-305.

⁵⁵ Home Office, *Safety and Justice: The Government's Proposals on Domestic Violence* (2003, Cmnd 5847).

⁵⁶ In determining whether a loss of self-control has a qualifying trigger, the fact that a thing done or said amounted to sexual infidelity is to be disregarded (Coroners and Justice Act 2009 section 55 (6) (c)).

⁵⁷ Section 55 Coroners and Justice Act 2009.

⁵⁸ *R v Clinton, Parker and Evans* [2012] EWCA Crim 2.

⁵⁹ S Edwards, "'Loss of Self Control': The Cultural Law of Sexual Infidelity and the Transformative Promise of Self Defence', in A Reed, M Bohlander, N Wake, E Engleby and V Adams (eds), *Homicide in Law: A Research Companion* (Routledge, 2018).

⁶⁰ As the victim is dead, there is often little that can be done to challenge the killer's account; J Morgan, 'Provocation Law and Facts: Dead Women Tell No Tales, Tales are Told about Them' (1997) *Melbourne University Law Review* 237-276.

⁶¹ This was asserted in *R v Clinton and others*, n 58 above.

homicide.⁶² Where women are seeking a defence to killing male intimate partners they are often trying to do so in the context of a history of domestic abuse where the primary emotion is fear not anger.⁶³ It is well documented, however, that women do not have readily available defences to killing male perpetrators of domestic abuse; self-defence is more accessible to startled householders than to abused women who kill.⁶⁴ As the case of Sally Challen (who killed her abusive husband) shows,⁶⁵ abused women are typically pushed towards arguing diminished responsibility rather than loss of control.⁶⁶ It has been argued that it is wrong to medicalise and pathologise women by requiring that they show that they are suffering from a recognised mental condition, such as depression, or the contested ‘battered women’s syndrome’,⁶⁷ but until further reforms (if any) take place, then this will remain the situation. Helen was right to say the reasons women kill are self-defence or ‘psychiatric problems’, but it is the law is pushing them to the label of mental illness because it does not accommodate the reality of coercive control, nor the proportionality of using a weapon as a self-defensive response. If the loss of control were modified so that coercive control could be taken into account as a qualifying trigger, and jurors had a good understanding of the impact of that on the ability to exercise ‘reasonable’ restraint,⁶⁸ then the outcomes for victims of domestic abuse might be different.⁶⁹

Policing Men: The Role of the Police

The history of the policing of domestic abuse in England and Wales suggests that there are significant barriers to be overcome in holding perpetrators of abuse responsible and fully accountable.⁷⁰ All of the legal powers available to the police are contingent on police understanding their role and using their powers appropriately and empathetically without recourse to stereotypes or victim blaming. The 1990s and 2000s were a time when

⁶² Burton, *Domestic Abuse, Victims and the Law*, n 49 above, 161.

⁶³ Edwards, ‘“Loss of Self Control”: The Cultural Law of Sexual Infidelity and the Transformative Promise of Self Defence’, n 59 above; S Edwards ‘Women Who Kill Abusive Partners: Reviewing the Impact of Section 55(3) ‘Fear of Serious Violence’ Manslaughter – Some Empirical Findings’ (2021) 72(2) *Northern Ireland Legal Quarterly* 245-270.

⁶⁴ Edwards, ‘“Loss of Self Control”: The Cultural Law of Sexual Infidelity and the Transformative Promise of Self Defence’, n 59 above.

⁶⁵ *R v Challen* [2019] EWCA Crim 916.

⁶⁶ V Bettinson, ‘Aligning Partial Defences to Murder with the Offence of Controlling or Coercive Behaviour’ (2018) 83(1) *Journal of Criminal Law* 71-86.

⁶⁷ J Herring, *Domestic Abuse and Human Rights*, n 15 above, 139.

⁶⁸ As it is the defence does not allow for mental conditions of the defendant to modify the standard of self-restraint for loss of control (*R v Rejmanski* [2017] EWCA Crim 206). A fresh approach is need to loss of control in the context of coercive control (Bettinson, ‘Aligning Partial Defences to Murder with the Offence of Controlling or Coercive Behaviour’, n 66 above; Burton, *Domestic Abuse, Victims and the Law*, n 49 above, 164-5).

⁶⁹ However, reform efforts might better be directed towards a specific defence as modifying existing defences may have unintended consequences; Burton, *Domestic Abuse, Victims and the Law*, n 49 above. See Nourse who argues for a specific defence (V Nourse, ‘Passions Progress: Modern Law Reform and the Provocation Defence’ (1997) 106 *The Yale Law Journal* 1331-1406).

⁷⁰ S Edwards, *Policing Domestic Violence* (Sage, 1989).

government policy strongly mandated that the police be more effective in domestic abuse cases.⁷¹ Empirical research showed that many cases did not proceed because victims withdrew their complaints; as a result, enhanced or effective evidence gathering policies were introduced.⁷² These policies encouraged the police to build cases on evidence other than the statement of the victim, for example gathering photographic evidence, 999 emergency call recordings, medical evidence and, in more recent times, body worn camera in addition to the statements of officers attending the scene. Yet a decade after these policies were first introduced, criminal justice inspectorates were still reporting police failings, especially in relation to non-physical abuse.⁷³ A new offence of coercive and controlling behaviour was introduced in England and Wales in 2015. The offence is a potential game changer, but has yet to live up to its full promise: the police and prosecutors are still more likely to investigate and prosecute physical abuse than they are coercive and controlling behaviour or stalking.⁷⁴ Furthermore, an inspection specifically focusing on effective evidence gathering found that the police lack the resources and training to deliver on the policy, for example failing to gather photographic evidence of physical injuries.⁷⁵ Photographic evidence looks like an easy win for police and prosecutors, whereas the evidence that needs to be gathered to support a prosecution for coercive and controlling behaviour is much more comprehensive.⁷⁶ A recent inspection reveals continuing failings in the evidence gathered by the police and the service provided by the CPS, including pushing forward action plans and building cases for prosecution.⁷⁷

The Centre for Women's Justice raised a super complaint about the policing of domestic abuse, and following on from this, a super complaint about the approach of the police to policing its own domestic abusers.⁷⁸ The issue of police perpetrators of VAWG is a pressing one as the murder of Sarah Everard and subsequent cases have highlighted. Trust in the

⁷¹ Burton, *Domestic Abuse, Victims and the Law*, n 49 above, 121-123.

⁷² For the latest guidance see College of Policing, n 4 above.

⁷³ Her Majesty's Inspectorate Constabulary, *Everyone's Business: Improving the Police Response to Domestic Abuse* (HMIC, 2014). One victim said she was told to stop calling unless she had a physical assault to report, despite suffering domestic abuse for more than three years (HMICFRS (2014) n 65, 40). See also Her Majesty's Inspectorate Constabulary and Fire and Rescue Services (HMICFRS), *A Progress Report on the Police Response to Domestic Abuse* (HMICFRS, 2017); Her Majesty's Inspectorate Constabulary and Fire and Rescue Services, *The Police Response to Domestic Abuse: An Update Report* (HMICFRS, 2019).

⁷⁴ D McPhee, M Hester, L Bates, S Lilley-Walker and D Patsios, 'Criminal Justice Responses to Domestic Violence and Abuse in England: An Analysis of Case Attrition and Inequalities Using Police Data' (2021) *Policing and Society* 963-980.

⁷⁵ Criminal Justice Joint Inspectorate (CJJI) (2020) *Evidence Led Prosecutions* (London: CJJI).

⁷⁶ V Bettinson, V Munro and M Burton, 'Going for Gold: Professionals' Experiences of the Design and Implementation of Transformative Coercive Control Offences in Scotland and England and Wales, *Criminology and Criminal Justice*, (2024) In press.

⁷⁷ Her Majesty's Inspectorate of the Crown Prosecution Service (2023), *The Service from the CPS to Victims of Domestic Abuse*. Available at: <https://www.justiceinspectorates.gov.uk/hmcpsi/inspections/the-service-from-the-cps-to-victims-of-domestic-abuse> (last accessed 14 June 2024).

⁷⁸ Centre for Women's Justice (CWJ), *Super-Complaint-Failure to Address Police Perpetrated Domestic Abuse* (CWJ, 2020)

Metropolitan police in particular is at an all-time low, and the Casey review has indicated that the police need to take much more robust action against perpetrators of VAWG in their own ranks.⁷⁹ In Cowie's world, one impact of the curfew is that policing has become a female domain; the curfew has made it more difficult for men to work in areas where a 24/7 work pattern is required. Whether more women in policing would improve the police response to domestic abuse in England and Wales is a moot point. When they were first introduced, specialist domestic abuse units tended to be populated by more female police officers than male, but, in those days, this was regarded as low value work, and they seemed to have minimal impact on eradicating that culture, perhaps only serving to reinforce it.⁸⁰ Achieving cultural change in policing is difficult; training is often insufficient.⁸¹ The recruitment of more female officers may be one component of change but it is unlikely to be a complete answer to the misogynistic culture of policing. As Emma Cunningham observes, men are in a position of power that women, even police women, will never be in: '[t]his power differential and abuse of power allows those policemen who are predatory to behave differently to policewomen and to abuse their position of power within the police misogyny which is institutionalised'.⁸²

Whilst this context paints a pessimistic picture for the policing of men who perpetrate VAWG, there continue to be high expectations of what the police could do in this space. Over the last two decades police powers have been expanding. The criminalisation of non-molestation orders under the Family Law Act 1996 gave the police powers to enforce civil remedies on behalf of victims of domestic abuse. The Crime and Security Act 2010 ushered in hybrid civil protection orders, Domestic Violence Prevention Orders (DVPO), that could be issued and applied for by the police.⁸³ DVPOs are designed as a preventative measure, but there are concerns about their underutilisation and under enforcement.⁸⁴ Alongside these measures, a domestic violence disclosure scheme (DVD), known as Clare's law, was also

⁷⁹ Baroness Casey, *An Independent Review into the Standards of Behaviour and Internal Culture of the Metropolitan Police Service*, March 2023. Available at: <https://www.met.police.uk/SysSiteAssets/media/downloads/met/about-us/baroness-casey-review/update-march-2023/baroness-casey-review-march-2023a.pdf> (last accessed 14 June 2024).

⁸⁰ M Burton, *Legal Responses to Domestic Violence* (Routledge-Cavendish, 2008).

⁸¹ N Fielding, *Professionalizing the Police: The Unfulfilled Promise of Police Training* (Oxford University Press, 2018).

⁸² E Cunningham, *Women in Policing: Feminist Perspectives on Theory and Practice* (Routledge, 2021), 89. Cunningham's freedom of information request in relation to disciplinary proceedings in selected forces in England and Wales showed that whilst the behaviour of some female officers did have similarities with males (sharing inappropriate images for example), there was not the same abuse of power and authority in forming inappropriate relationships.

⁸³ M Burton, 'Emergency Barring Orders in Domestic Violence Cases; What Can England and Wales Learn from Other European Countries?' (2015) 27 (1) *Child and Family Law Quarterly* 25-42. These orders will be replaced by more comprehensive orders under the Domestic Abuse Act 2021, once they have been piloted and brought into force; Bishop, 'Prevention and Protection: Will the Domestic Abuse Act Transform the Response to Domestic Abuse in England and Wales?', n 5 above; Burton, *Domestic Abuse, Victims and the Law*, n 49 above, 190-201.

⁸⁴ L Bates and M Hester, 'No Longer a Civil Matter? The Design and Use of Protection Orders for Domestic Violence in England and Wales' (2020) 42(2) *Journal of Social Welfare and Family Law* 122-153.

introduced. The remainder of this article will focus on the DVDs and compare this to the cohabitation contracts envisaged by Cowie as part of the solution to VAWG.

Prevention: Is This Man Safe to be in a Relationship?

Most of the discussion so far has focused on what the criminal justice system can do if things have already gone wrong; if the criminal law has been broken or a civil/criminal hybrid protection order has been/can be issued because of domestic abuse. It has been argued above that the focus should be on the perpetrator rather than the victim. However, in an ideal world, there would be no perpetrator; the focus would be on preventing VAWG, that is what Cowie wants to achieve in her fictional world. The curfew is one component of that but alongside are cohabitation counselling and cohabitation contracts with preventative objectives. We see cohabitation counselling and contracts being discussed in Miss Helen Taylor's class on the Prevention of Femicide Act 2023. Helen says, the purpose of cohabitation counselling is to: 'identify those couples most at risk of developing abusive patterns within their relationship and prevent them from living together'.⁸⁵ Cass responds: 'Cohabitation certificates just make women look weak...like we can't figure out for ourselves who the decent men are'.⁸⁶ We are almost immediately introduced to the idea that Helen is unable to figure out that her boyfriend Tom is not a 'decent man'. Helen's friend Mabel, who works with Cass's mother at the tagging centre, tells her 'he's a prick' but Helen's judgment is clouded by 'baby fever'.⁸⁷

In the novel, we join Helen and Tom whilst they were in the waiting room of the counselling centre.⁸⁸ The counsellor comments on Helen's well-paid job as a teacher in the post curfew world where traditionally female dominated professions are valued. We see them discussing the division of domestic labour and Tom's aspirations to get a better job when he is living in Helen's flat.⁸⁹ In the final counselling session,⁹⁰ the discussion turns to the timescales for having a baby and we discover a wide disparity in what Helen wants (she has already stopped contraception) and what Tom says he wants (to wait at least two years). Helen is already feeling that the counselling is an unnecessary barrier to achieving what she wants. After 12 weeks: 'she wanted to tell Dr Fearn [the counsellor] that their relationship was none of her business and she should just bloody well give them the certificate...it irritated her that

⁸⁵ Cowie, *After Dark*, n 17 above, 20.

⁸⁶ *ibid.*

⁸⁷ *ibid.*, 32.

⁸⁸ *ibid.*, 74.

⁸⁹ *ibid.*, 81.

⁹⁰ *ibid.*, 137.

they had to go through this performance just to be allowed to live together...She felt, deep down, that what was really being assessed was her ability to pick a suitable partner'.⁹¹ When the counsellor leaves the room Tom shows Helen that he regards the whole process as a performance: 'It's not like we have to tell her the truth'.⁹² He tells Helen to 'get a grip' and we are told she is shocked and sees 'something cold' in his gaze that she has not noticed before. Yet when the counsellor returns his performance of being a 'charming, smiling man' resumes. Helen begins to doubt her experience but in her private exchange with the counsellor she tries to convince her that Tom: 'wants what is right for us. He's the sensible one'. The counsellor says that her impression is the other way around and she is keen for the sessions to continue, but Helen wants the cohabitation certificate straightaway. We are given the impression that it is issued somewhat reluctantly.⁹³

What could have been done to stop Tom killing Helen, as he does after they move in together? It is worth dwelling on the detail of the cohabitation counselling because the narrative suggests that even when victims know about the warning signs before moving forward in the relationship these are unlikely to be effective in stopping them. Mabel and others have seen through the façade of the charming man but even when Helen herself sees things she does not like she dismisses them. Tom is 'gaslighting'⁹⁴ her and making her question what she has seen. The 'private' man is not the 'public' man and the counsellor is unable to conclude that Helen is 'at risk'. Reading this passage of *After Dark* there are obvious parallels with domestic violence disclosure schemes (DVDS) that are being implemented in many jurisdictions. The schemes are designed to give potential victims of domestic abuse the information that they need to make informed decisions about keeping themselves safe. But what message do they convey about who is to blame and who is responsible if things go wrong? Like cohabitation contracts, are they just another way of saying 'she should have picked a better man?'

Domestic Violence Disclosure Schemes and Responsibilisation

A domestic violence disclosure scheme was introduced in England and Wales in March 2014. It was introduced following the killing of Clare Wood in 2009 by her ex-partner George Appleton. Appleton had been abusive to Clare during their relationship and, as is typical, his abuse escalated at separation. Appleton was known to the police as he had previous

⁹¹ *ibid.*

⁹² *ibid.*, 140.

⁹³ *ibid.*, 144.

⁹⁴ 'Gaslighting' refers to making the victim doubt their own reality; the term stems from a 1938 film *Gas Light*, where the wife is made to feel 'insane' by her husband's manipulative/abusive behaviour.

convictions and a custodial sentence related to domestic abuse. The coroner's inquiry into Clare Wood's death recommended consideration be given to setting up a DVDS so that people could find out whether the person they were in a relationship with had a previous history of domestic violence. It was the coroner's view that informing women of previous convictions for domestic abuse related offending would enable them to make an 'informed choice' regarding their own safety. Clare's father also campaigned relentlessly for a DVDS. The scheme was introduced despite some reservations raised by third sector agencies regarding its likely efficacy.⁹⁵

The introduction of the scheme led to some debate about whether the human rights of victims and potential victims of domestic abuse were being adequately balanced against those of perpetrators of domestic abuse.⁹⁶ Achieving balance is difficult but principled weighting of rights is possible with human rights instruments such as the European Convention on Human Rights (ECHR).⁹⁷ The human rights of victims of domestic abuse to be free from inhuman and degrading treatment (which includes domestic abuse), have greater weighting than the privacy rights of perpetrators of VAWG.⁹⁸ This is discussed elsewhere in this collection by Jonathan Herring who argues for the right to a curfew, as proposed by Cowie. There is no doubt that despite the plethora of guarantees surrounding personal information, the police also have a duty to protect where a person is at risk of serious life-threatening violence, and infringe human rights if they fail in their positive obligations to do so.⁹⁹

When the DVDS was first introduced in England and Wales it had no statutory basis and relied on the common law powers that the police have to disclose information for public protection and crime prevention. However, it has since been put on a statutory footing by the Domestic Abuse Act 2021.¹⁰⁰ The scheme has two strands; a 'right to ask' and a 'right to know'. Under the right to ask strand, a person may approach the police to find out if someone they are in a relationship with has a history of domestic abuse in the form of previous convictions. The right to know strand of the scheme allows the police to proactively disclose information

⁹⁵ The background to the introduction of the scheme is discussed in M Duggan and J Grace, 'Assessing the vulnerabilities of the Domestic Violence Disclosure Scheme' (2018) 30(2) *Child and Family Law Quarterly* 145-66. See also J Grace, *Domestic Abuse Disclosure Schemes* (Springer, 2022).

⁹⁶ C Bessant, 'Protecting Victims of Domestic Violence: Have we got the Balance Right?' (2015) 79(2) *Journal of Criminal Law* 102-21.

⁹⁷ L Campbell, A Ashworth and M Redmayne, *The Criminal Process* (OUP, 2019).

⁹⁸ Herring, *Domestic Abuse and Human Rights*, n 15 above.

⁹⁹ This duty in human rights law is not backed up by police liability for negligence in failing to protect, although arguably cases just as that of Joanna Michael, murdered in front of her children by her ex-partner, build the case for such accountability (*Michael and others v CC of South Wales* [2014] UKSC 2. See further Burton *Domestic Abuse, Victims and the Law*, n 49 above, 23-26.

¹⁰⁰ Bishop, 'Prevention and Protection: Will the Domestic Abuse Act Transform the Response to Domestic Abuse in England and Wales?', n 4 above.

following a risk assessment by a Multi-Agency Risk Assessment Conference (MARAC).¹⁰¹ The right to ask part of the scheme has been subject to more critical analysis than the right to know. The guidance and law relating to disclosure have been scrutinised and the efficacy of this strand of the scheme in particular has been heavily critiqued.¹⁰²

Marian Duggan argues that the DVDS creates 'victim hierarchies'; victims are treated differently depending on whether they are accessing the right to ask or right to know.¹⁰³ Whilst the right to know is accompanied by thorough risk assessment and IDVA involvement, that advocacy and representation is lacking for victims using the right to ask. Duggan points out that in order to use the right to ask, an applicant has to know about the scheme in the first place. There are limitations on when an applicant can get disclosure, which may limit the efficacy of the scheme. Research studies on the operation of DVDS in its early days suggest that there are highly variable levels of use and different approaches to its implementation across the 43 police forces in England and Wales.¹⁰⁴ A key limitation of the scheme is the police can only disclose information that they have on record, which may be a poor reflection of the person's risk, as most domestic abuse is not reported to the police. Even if the perpetrator has a criminal history, it may not be flagged on police records as domestic abuse related offending and so the full extent of the person's offending may not be evident. The information that is provided by the police under the DVDS, particularly the right to ask route may be lacking depth and detail.¹⁰⁵ It may result in a victim who has concerns about safety being falsely reassured that there is nothing to worry about and remaining in a relationship. Katerina Hajimatheou and Jamie Grace have documented the wide variations in the depth and usefulness of the information disclosed; some forces are 'risk averse' and try to minimise the use of the scheme to avoid complaints from 'disgruntled offenders', others are more 'permissive' and focused on victim centred collaboration with partner agencies.¹⁰⁶

A concerning feature of the DVDS is its responsabilisation of victims. It can be argued that the scheme sits within the broader culture of victim blaming that was considered above. Duggan observes: 'the themes of responsibility and good citizenship which underpin elements of this policy are largely focused towards the victim. The onus is placed on past, present or

¹⁰¹ MARACs are now an established part of the preventative work of the criminal justice agencies in partnership with domestic abuse specialists such as independent domestic abuse advocates (IDVAs).

¹⁰² M Duggan and J Grace, 'Assessing the vulnerabilities of the Domestic Violence Disclosure Scheme', n 95 above; J Grace, *Domestic Abuse Disclosure Schemes*, n 95 above.

¹⁰³ M Duggan 'Victim hierarchies and the Domestic Violence Disclosure Scheme' (2018) 24(2) *International Review of Victimology* 199-217.

¹⁰⁴ *ibid.*

¹⁰⁵ *ibid.*

¹⁰⁶ K Hadjimatheou and J Grace, 'No Black and White Answer about How Far We Can Go': Police Decision-Making under the Domestic Violence Disclosure Scheme' (2021) 31(7) *Policing and Society* 834-847.

potential victims to do something about the situation they believe themselves to be in'.¹⁰⁷ Similar concerns about by placing the burden on the victim to protect themselves (displacing state responsibility) have been raised in respect of schemes in other jurisdictions. This can result in blaming the victim if they do not request information under the DVDS or if they receive information and 'fail' to act on it.¹⁰⁸ Duggan and Grace also note concerns that the scheme focuses too much on victim responsibility rather than perpetrator behaviour and accountability.¹⁰⁹ There is potential for victims to be blamed for staying in a relationship when they have been told about a previous history of domestic abuse. Using a criminal history should be empowering rather than further disempowering for victims.¹¹⁰

Whether this is how the victims experience the schemes has been explored in recent empirical research. Charlotte Barlow, Sandra Walklate and Nicole Renehan situate the DVDS in the context of the responsibilisation strategy which they and others highlight has seen the State hive off responsibility for crime prevention to citizens.¹¹¹ Barlow et al interviewed a sample of mainly white, heterosexual and non-disabled women to see what they thought about the DVDS.¹¹² Some of the women knew about the scheme, had accessed it, however they mainly only did so when they were already ready to leave the relationship. Many of the victim-survivors said that even if they had been aware of the scheme they would not necessarily have accessed it because in the early stages of the relationship the 'triggers' that might have prompted them were not obvious. There is often a degree of optimism at the start of a relationship. As one survivor is quoted as saying; 'you don't go into a relationship thinking 'right, I best check out for domestic abuse before I get involved''.¹¹³ Others said they were too afraid of the consequences for themselves or their children. Katerina Hadjimatheou has commented that women with children might be pressurised by social services to use the

¹⁰⁷ Duggan, 'Victim hierarchies and the Domestic Violence Disclosure Scheme', n 103 above.

¹⁰⁸ S Walklate and K Fitz-Gibbon, (2018) 'Understanding Domestic Violence Disclosure Schemes', Research Brief, Monash Gender and Family Violence Prevention Centre. Available at: <https://www.monash.edu/arts/gender-and-family-violence/research-and-projects/domestic-violence-disclosure-schemes> (last accessed 14 June 2024).

¹⁰⁹ Duggan and Grace 'Assessing the vulnerabilities of the Domestic Violence Disclosure Scheme', n 95 above.

¹¹⁰ K Hadjimatheou, 'Using a Criminal History to Empower Victims of Domestic Abuse' (2022) 20(3) *European Journal of Criminology* 1106-1122.

¹¹¹ C Barlow, S Walklate and N Renehan, 'Rendering them Responsible: Victim-Survivors' Experiences of Clare's Law and Domestic Violence Disclosure Schemes' (2023) 8 (2) *Journal of Gender-Based Violence*, 1-15.

¹¹² It is important to note that they found that there might be particular barriers to use of the scheme by women of colour or other minoritised groups (consistent with the concerns raised by others (see, for example, Walklate and Fitz-Gibbon, 'Understanding Domestic Violence Disclosure Schemes', n 108 above).

¹¹³ C Barlow, N Renehan, and S Walklate, *Clare's Law and Domestic Violence Disclosure Schemes: Victim-Survivor Perspectives* (British Academy Project Report, 2021). Available at: <https://clareslawexperiencesproject.com/wp-content/uploads/2021/10/Clares-Law-DVD-Schemes.pdf> (last accessed 14 June 2024).

scheme, and in the realm of child protection, held responsible for the consequences if they fail to do so.¹¹⁴

When women did access the scheme Barlow et al found that they were inconsistencies in information giving; some women were not given information because the police decided the relationship had already ended.¹¹⁵ Cases that were no further actioned, not an uncommon outcome in domestic abuse, might result in no disclosure resulting in a false picture of safety. As, victim-survivors interviewed by Barlow et al observed, non-disclosure does not mean nothing to be concerned about. Lack of follow up after disclosures were made were also raised as a concern by their interviewees; some women felt 'left alone' and 'unsupported'. A key finding of Barlow et al is that some victims were only told about the DVDS once they had decided to engage with a prosecution. Barlow et al note this raises questions about who is seen as 'deserving' of a proactive a criminal justice response. Whatever victims decide, including to prosecute or not, they should feel safe and supported. However, some victims felt guilt at not leaving, which Barlow et al conclude this has 'potential unintended consequences of responsabilising women who access such schemes'.¹¹⁶

There are many reasons why women remain in abusive relationships, but women are aware they are blamed for doing so. The responses of Barlow et al's interviewees showed that the responsibility they felt was 'exacerbated by the DVDS process'.¹¹⁷ There is a perceived expectation that the victim will leave when given concerning information, but this is in the context of lack of wrap around support to do so. Barlow et al also report women feeling responsibility to warn new partners of the perpetrator about a history of domestic abuse in situations where privacy law forbids sharing information disclosed under the scheme. Some women felt a responsibility to report abuse against them so that it would be on record for the new partner under the DVDS. This pressure to share is described 'as a significant burden to carry'.¹¹⁸ As Barlow et al conclude, DVDS have proliferated with little or no evidence that they meet women's needs. Their study suggests that they might be counterproductive in making women feel blamed and responsible for not doing more to protect themselves and others.

¹¹⁴ K Hadjimatheou, 'Social Care Told me I had to: Empowerment and Responsibilisation in the Domestic Violence Disclosure Schemes (2022) 62(2) *British Journal of Criminology* 320-336. This is consistent with Hester's three planet model of responses to domestic abuse (M Hester 'The Three Planet Model: Towards an Understanding of the Contradictions in Approaches to Women and Children's Safety in the Contexts of Domestic Violence' (2011) 41 *British Journal of Social Work* 837-853).

¹¹⁵ Barlow et al, *Clare's Law and Domestic Violence Disclosure Schemes: Victim-Survivor Perspectives*, n 113 above.

¹¹⁶ *ibid.*

¹¹⁷ Barlow et al, 'Rendering them Responsible: Victim-Survivors' Experiences of Clare's Law and Domestic Violence Disclosure Schemes', n 111 above.

¹¹⁸ *ibid.*, 11.

They point out that the statutory guidance accompanying the Domestic Abuse Act 2021, which requires the DVDS to be accompanied by proactive referral to wrap around support, needs to be adequately resourced. This would be an important step towards addressing the current burdens that victims feel under this scheme.

Conclusion

There is a long tradition in legal responses to VAWG of blaming the victim for being harmed and excusing/justifying the perpetrator. Changing the culture that supports victim blaming is difficult. That is not to say there has been no change in England and Wales over the past few decades, but improving the substantive criminal law and the way it is implemented is often an incremental process with backlash and back sliding. An example of this has been discussed in this article; the sexual infidelity defence, which was seemingly abolished and then resurrected (at least in part) by the judiciary.

There is a need to focus less on victim behaviour, character, and situations, and more on what perpetrators do. Perpetrators target vulnerability and work with that to hide their offending. There is a drive in the prosecution of rape to switch police investigations to focus on the suspect early on. If successful, this would be a significant change from the current focus on the victim. However, when we are thinking about what more the legal system can do to protect victims of male violence and abuse we need to be careful about the unintended consequences of well-intentioned reform. Cowie's cohabitation counselling and cohabitation contracts looked like an excellent idea to a plug the gap left by the curfew. The curfew was never going to protect women from domestic abuse and homicide because the main danger to women is not 'stranger danger' but intimate partners in their homes. However, the cohabitation contract did not protect Helen from being killed by her cohabitee. It would be easy to look at Helen and say the warning signs were there, evident to others, she chose to ignore them. However, this would be to victim blame. It was not Helen's responsibility to keep herself safe, Tom was responsible for killing her. We need responses to VAWG that focus on perpetrators and stop blaming victims. The research reviewed above suggests that DVDS, like cohabitation contracts, have limited potential to do that and they may just end up further victimising women. The message that these fictional and real measures send out is that women need to do their own safety work; that it is up to women to choose well and to protect themselves, and if they get it wrong, it's their fault. This is the wrong message. The State has obligations under human rights law to make sure that the laws and the way that they are implemented protect against domestic abuse. These human rights obligations reach to providing appropriate wrap around support and adequately resourcing this.