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‘Adding Insult to Injury? The Criminal Law’s Response to Domestic Abuse-Related Suicide in England and Wales’

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Introduction

Despite evidence suggesting a significant relationship between domestic abuse and suicidality,² and notwithstanding the fact that domestic homicides perpetrated by abusive partners are an ongoing priority and source of concern to the criminal justice system, the issue of domestic abuse-related suicide has received strikingly little attention from the state, either in procedures developed for risk assessing and safeguarding victims, in laws designed to protect victims and punish perpetrators, or in Violence Against Women and Girls strategies.

It is well-established that the State has a positive duty to take operational measures to safeguard the lives of those within its jurisdiction and to protect them from inhuman or degrading treatment, including in situations where - as a consequence of domestic abuse - authorities have actual or imputed knowledge of a ‘real and immediate risk’ to an identifiable individual.³ In *Commissioner of Police of the Metropolis v DSD and another*⁴ the Supreme Court has made it clear, moreover, that this obligation extends to the need for state agencies

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² For further discussion, see R. Aitken & V. Munro (2018) *Domestic Abuse and Suicide: Exploring the Links with Refuge’s Client Base and Work Force* (London: Refuge); and V. Munro & R. Aitken (2018) ‘From Hoping to Help: Identifying and Responding to Suicidality Amongst Victims of Domestic Abuse in England and Wales’, forthcoming.

³ *Osman v UK* (1989) 29 EHRR 245.

⁴ [2018] UKSC 11.

(including the police) to have systems that allow serious violent crime to be investigated effectively, and to ensure that such systems are applied appropriately in all cases.

In this article, we argue, therefore, that it is high-time that criminal law and criminal justice agencies broaden their frame of reference to engage as a priority with domestic abuse-related suicidality. Drawing on recent empirical research conducted by the authors with Refuge (a national charity that advocates on a daily basis for thousands of victims of gender based violence),⁵ we highlight the prevalence of suicidality amongst survivors of domestic abuse in England and Wales, and reflect on what a criminal justice response that takes this seriously would entail. We revisit, in particular, the question of manslaughter liability for domestic abusers whose victim takes her own life. This was raised for consideration by the Court of Appeal a decade ago in *R v Dhaliwal*,⁶ but we suggest that it is ripe for re-examination in light of the increasingly sophisticated research base on the links between domestic abuse and suicidality, alongside other recent developments, both in criminal law and psychiatry.

Domestic Abuse and Suicidality: Existing and New Research

While there are, of course, a number of factors that can contribute to a woman's decision to take her own life, previous studies have evidenced a significant adverse physical and psychological health effect associated with experiencing domestic abuse,⁷ often suggesting a correlation between intimate partner violence and suicidality.⁸ In line with the UK

⁵ <https://www.refuge.org.uk>

⁶ [2006] EWCA Crim 1139.

⁷ Gleason, W. (1993) 'Mental Disorders in Battered Women: An Empirical Study' 8 *Violence and Victims* 53-68; Golding, J. (1999) 'Intimate Partner Violence as a Risk Factor for Mental Disorder: A Meta Analysis' 14(2) *Journal of Family Violence* 99-132; Boyle, A. et al (2006) 'The Association Between Domestic Violence and Self Harm in Emergency Medicine Patients' 23(8) *Emergency Medicine Journal* 604-607; Afifi, T. et al (2009) 'Mental Health Correlates of Intimate Partner Violence in Marital Relationships in a Nationally Representative Sample of Males and Females' 24(8) *Journal of Interpersonal Violence* 1398-1417; Devries, K. et al (2013) 'Intimate Partner Violence and Incident Depressive Symptoms and Suicide Attempts: A Systematic Review of Longitudinal Studies' 10(5) *PLOS Medicine*; Oram, S. et al (2017) 'Violence Against Women and Mental Health' *Lancet Psychiatry* 159-170.

⁸ Blasco-Ros, C. et al (2010) 'Recovery from Depressive Symptoms, State Anxiety and Post-Traumatic Stress Disorder in Women Exposed to Physical and Psychological, But Not to

Government's current policy,⁹ we define domestic abuse here to include physical, sexual, psychological and / or economic abuse, perpetrated by someone with whom the victim is in a familial, domestic, intimate or otherwise close inter-personal relationship. Victims (and perpetrators) of domestic abuse can be male, female, trans or intersex, but the majority of domestic abuse in England and Wales is perpetrated by men upon women.¹⁰ Women who experience such abuse have been shown to be more likely than their non-abused counterparts to experience suicidal thoughts and / or to attempt suicide.¹¹ The relationship between domestic abuse and suicide is clearly not linear: indeed, it is often mediated by feelings of depression, distress, hopelessness, post-traumatic stress disorder (PTSD), and drug or alcohol use, and moderated by the existence of social support.¹² Nonetheless, some previous studies have identified a dose response effect whereby the propensity to suicidality increases with the severity, frequency and / or longevity of duration of abuse experienced.¹³

Psychological Intimate Partner Violence Alone: A Longitudinal Study' 10 *BMC Psychiatry* 98, at 98.

⁹ <https://www.gov.uk/guidance/domestic-violence-and-abuse#domestic-violence-and-abuse-new-definition>

¹⁰ For discussion, see for example, Hester, M. (2009) 'Who Does What to Whom? Gender and Domestic Violence Perpetrators' (Northern Rock Foundation), available at <http://www.nr-foundation.org.uk/downloads/Who-Does-What-to-Whom.pdf>

¹¹ Reviere, S. et al (2007) 'Intimate Partner Violence and Suicidality in Low-Income African American Women: A Multimethod Assessment of Coping Factors' 13 *Violence against Women* 1113; Seedat, S. et al (2005) 'Association Between Physical Partner Violence, Post-Traumatic Stress, Childhood Trauma and Suicide Attempts in a Community Sample of Women' 20(1) *Violence and Victims* 87; Pico-Alfonso, M. et al, (2006) 'The Impact of Physical, Psychological, and Sexual Intimate Male Partner Violence on Women's Mental Health: Depressive Symptoms, Posttraumatic Stress Disorder, State Anxiety and Suicide' 15(5) *Journal of Women's Health* 599.

¹² Kaslow, N. et al (1998) 'Factors that Mediate and Moderate the Link Between Partner Abuse and Suicidal Behaviour in African American Women' 66 *Journal of Consulting and Clinical Psychology* 533; Thompson M. et al (1999) 'Partner Abuse and Posttraumatic Stress Disorder as Risk Factors for Suicide Attempts in a Sample of Lower-Income, Inner-City Women' 12 *Journal of Traumatic Stress* 59; Bergman, B. & Brismar, B. (1991) 'Suicide Attempts by Battered Wives' 83 *Acta Psychiatr. Scand.* 380.

¹³ Naved, R. & Akhtar, N. (2008) 'Spousal Violence Against Women and Suicidal Ideation in Bangladesh' 18(6) *Women's Health Issues* 442; Wingwood, G. et al (2000) 'Adverse Consequences of Intimate Partner Abuse Among Women in Non-Urban Domestic Violence Shelters' 19 *American Journal of Preventative Medicine* 270.

Extrapolating from various statistics, in 2004, Sylvia Walby suggested that more than one-third of all female suicides in England and Wales *may* have been committed by women who had been subjected to domestic abuse,¹⁴ but in the intervening years, there has been little rigorous testing of this claim. Indeed, much of the research which has sought to track and evidence this relationship more systematically has been undertaken outside of the UK. This raises questions about its applicability, particularly given the ethnic and cultural diversity of many UK communities,¹⁵ as well as the peculiarities of its health and social welfare systems. Most previous studies have also tended to focus on physical and / or sexual forms of abuse, failing to capture the sorts of psychological abuse now criminalised in England and Wales via the offence of ‘coercive and controlling behaviour’ within the Serious Crimes Act 2015.

Against this background, and in an effort to improve our understanding of the prevalence, as well as the factors that increase or decrease the likelihood of, suicidality amongst victims of domestic abuse in the UK, the authors analysed a database of client case files,¹⁶ retained by Refuge for casework purposes. Having done so, we triangulated that analysis with findings from qualitative interviews with 20 frontline Refuge practitioners, with expertise in providing support to domestically abused clients. The authors identified a core subsample of 3,519 Refuge clients who were (i) aged over 18 years old, (ii) had completed all questions on the CORE-10, which is a brief screening tool designed to measure psychological distress, and (iii) had provided a history of abuse to their caseworker. Many of these clients had also completed a CAADA-DASH risk assessment questionnaire. This is routinely used by agencies in domestic abuse situations to provide a consistent basis for identifying high risk victims. In its original form, the CAADA-DASH conflates questions on depression and suicide, but in the version used by Refuge these are addressed separately, which enabled us a more clear-sighted analysis.

¹⁴ S. Walby (2004) ‘The Cost of Domestic Violence’, London: Women and Equality Unit.

¹⁵ Southall Black Sisters (2006) ‘Submission to the Law Commission Consultation Paper 177: A New Homicide Act for England and Wales’; Southall Black Sisters (2011) ‘Safe and Sane: A Model of Intervention on Domestic Violence, Mental Health, Suicide and Self-Harm Amongst Black and Minority Ethnic Women’ (Middlesex: SBS).

¹⁶ www.impactbyrefuge.org.uk

The methods and key findings arising from this analysis are discussed in more detail elsewhere.¹⁷ For current purposes, it suffices to report that – in line with the findings of previous research - the database revealed a substantial spectre of suicidality amongst Refuge’s already vulnerable client population. 24.2% (n=854) of clients reported that they were feeling suicidal now, recently or in the past. The majority of these (18.9% of the sample, n=664) reported that they were feeling suicidal either currently or recently, and 18.3% (n=644) advised that they had made plans to end their own lives. In addition, 3.1% (n=108) declared that they had made a failed suicide attempt either recently or in the past. While the absence of agreed definitions for ‘suicidality’, together with a diversity of mechanisms for sampling and analysing data across studies, make reliable assessments difficult, it is clear that this reflects a level of suicidality that is far higher than that of the general population.¹⁸

It is worth noting, moreover, that these figures likely under-represent the scale of the problem, since domestically abused clients who are feeling suicidal may not disclose this, either because of the stigma and shame that is often associated with suicidality or concerns about its impact upon their access to a refuge, custody of their children, or for fear of compulsory mental health intervention. Interviews with Refuge staff, who were asked as part of this research to draw upon their experiences of dealing – often over many years - with domestically abused clients, confirmed this high incidence of suicidal ideation and suicidality, with some estimating that as many as 40%-50% of their clients would report feeling suicidal.

Findings both from the case files and practitioner interviews indicated, moreover, that suicidality did not map neatly on to having experienced any particular type of abuse. We found positive correlations with suicidality across many of the specific forms of abuse documented. For physical abuse, we observed correlations in relation to being strangled ($r = .079, p < .01$), kicked ($r = .079, p < .01$), or suffocated ($r = .074, p < .01$). The strongest correlations for sexual abuse were found for ‘any report of sexual abuse’ ($r = .163, p < .01$) and

¹⁷ Op cit n 2

¹⁸ Cross-national research has estimated lifetime prevalence for suicidal ideation, plans and attempts to be 9.2%, 3.1% and 2.7% (S.E. = 0.1) respectively – Nock, M. et al (2008) ‘Cross-National Prevalence and Risk Factors for Suicidal Ideation, Plans and Attempts’ 192 *British Journal of Psychiatry* 98-105.

enforced prostitution ($r = .098, p < .01$). In respect of psychological abuse, isolation from family and friends ($r = .107, p < .01$), experiencing threats of harm with a weapon ($r = .109, p < .01$) and threats to kill a family member ($r = .092, p < .01$) were correlated with suicidality, as was 'any report of financial abuse' ($r = .092, p < .01$). The strength of these correlations increased, moreover, where victims were subjected to repeated abuse: this was particularly so in relation to cumulative sexual abuse ($r = .179, p < .01$) but also identified in respect of cumulative serious assault ($r = .111, p < .01$) and psychological abuse ($r = .111, p < .01$). Where the abuse took place over a prolonged period, this also increased the risk of suicidality, particularly where the abuse was physical in nature ($r = 1.04, p < .01$) or financial ($r = .097, p < .01$). The mean duration of physical abuse for those in the suicidal group was 4.31 years, compared with 2.96 years; and 15.6% ($n=133/854$) of suicidal clients had been abused by more than one perpetrator, compared with 8% ($n=211/2665$) of the non-suicidal cohort.

Perhaps unsurprisingly, given the traumatising nature of domestic abuse, almost 86% of our sample ($n=3022$) scored above the cut off for 'clinical concern' on the CORE-10 measure of psychological distress; but those in the suicidal group had significantly higher overall scores than their non-suicidal counterparts.¹⁹ 49% ($n=419/854$) fell within the 'severe distress' range (scores from 25 to 40), compared to 14% ($n=370/2665$) of the non-suicidal group. In terms of clients' responses to individual CORE-10 measures, the strongest correlations to suicidality were amongst those who reported feeling despairing or hopeless ($r = .327, p < .01$). 96% ($n=821/854$) of those in the suicidal group felt this way, compared with 79% ($n=2099/2665$) in the non-suicidal group. Interviews with Refuge practitioners indicated, moreover, that clients' interactions with the criminal justice system often contributed to this sense of despair, with any negative experiences from prior attempts at turning to the police or courts for protection diminishing clients' perception of the prospects of now being helped to safety.

State Responses to Domestic Abuse Suicidality

¹⁹ The average mean score for suicidal clients was 7.293 points greater than for non-suicidal clients ($M = 24.10$ vs $M = 16.81$).

Faced with this evidence in respect of the link between experiencing domestic abuse and suicidality, the lack of attention afforded to it by agencies in the UK tasked with risk assessing and safeguarding victims (particularly when contrasted with high profile initiatives to prevent and punish domestic homicides) is deeply problematic. Agencies that interact with victims of domestic abuse – including in the criminal justice context – must operate in ways that are designed to minimise the risks posed not only by the perpetrator but also by the victim to herself. This requires a broadening out of the conventional frames of risk assessment, a more trauma-informed engagement with questions of coping and resilience, and more effective multi-agency partnerships that provide holistic longer-term interventions designed to ensure women’s safety and support their empowerment.²⁰ In a context in which a number of reviews, including the most recent Her Majesty’s Inspectorate of Constabulary (HMIC) Report,²¹ highlight ongoing inadequacies in the ways in which police forces in England and Wales respond to domestic abuse (particularly in respect of their risk assessments), this is a demanding task. It is made all the more challenging, moreover, by the suggestion in our interviews with Refuge practitioners that procedures for Multi-Agency Risk Assessment Conferences (MARAC) in relation to high risk clients are already under considerable strain.

But taking domestic abuse related suicide more seriously does not stop with a broader lens for risk assessments and enhanced safety planning, nor with a more consciously ‘trauma-informed’ approach to engaging with this vulnerable constituency of victims. It also raises the question of what the criminal law can and should do in situations in which, despite the formal availability of safeguarding interventions, a victim of domestic abuse takes her own life. This, of course, was precisely the question that confronted the Court of Appeal in *R v Dhaliwal*. In that case, the Crown Prosecution Service (CPS) attempted to bring a charge of unlawful act manslaughter against an abusive partner, grounding the claim to a foundational criminal and dangerous act upon a long history of psychological abuse which had caused the victim to take

²⁰ For Refuge’s position on some of these issues, within the context of the Government’s recent Consultation on a proposed Domestic Abuse Bill, see ‘Transforming the Response to Domestic Abuse (2018), London: Refuge. Available at <https://www.refuge.org.uk/wp-content/uploads/2018/06/refuge-domestic-abuse-consultation-full-response-may2018.pdf>

²¹ HMIC (2017) ‘A Progress Report on the Police Response to Domestic Abuse’ available at <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/progress-report-on-the-police-response-to-domestic-abuse.pdf>

her own life. The court took the view, however, that the case must fall at the first hurdle since there was no basis for arguing that the psychological injury *alone* constituted an offence under section 20 of the Offences Against the Person Act 1861, as had been suggested, since the extension of the meaning of 'bodily harm' had stopped short of including psychological (as opposed to psychiatric) injury. As a result, there was no need to engage with the question of whether, had the CPS relied upon the relatively minor physical violence that had taken place on the night of Mrs. Dhaliwal's suicide, thus providing a foundational criminal and dangerous act, the causal link to the defendant's behaviour would have remained intact.

In its aftermath, several commentators have subjected the approach taken by the court in *R v Dhaliwal* to criticism. Stannard has insisted, for example, that "it is an affront to justice that the criminal law is unable to cope with" this sort of situation, and he has highlighted the absurdity of the outcome that "if I give someone a slight push and it unexpectedly kills them, that is manslaughter, but if I hound them to their death by a sustained course of psychological and emotional abuse it is not."²² Stannard has maintained that, while the criminal courts often invoke this insistence that the law cannot take account of psychological harms falling short of a psychiatric diagnosis, there is no need for doctrine to be so rigid in this respect, and indeed even prior to *Dhaliwal*, there had been instances where the law had excepted itself from this, for example, in the offences created under the Protection from Harassment Act 1997 in relation to causing a person psychological harm in the form of alarm or distress.

Similarly, other commentators have cast doubt upon the appropriateness of focusing upon the type, rather than the severity, of the harm caused, and have questioned the certainty that courts often purport to accredit to psychiatric diagnoses, which are in truth based on shifting and frequently contested criteria.²³ This difficulty was highlighted by Refuge in the immediate aftermath of the collapsed *Dhaliwal* case. Refuge also challenged the court's decision to view the impact of domestic abuse through an exclusively psychiatric lens and asserted that the

²² Stannard, J. (2010) 'Sticks, Stones and Words: Emotional Harm and the English Criminal Law' 74(6) *Journal of Criminal Law* 533, at 534).

²³ Munro, V. & Shah, S. 'R v Dhaliwal: Reconstructing Manslaughter Cases in Domestic Violence Suicide' in C. McGlynn et al (2010) *Feminist Judgments: From Theory to Practice* (Oxford: Hart).

psychological impacts suffered by many victims were no less injurious for lack of a formal label.²⁴ Building on this, Munro and Shah's subsequent 'feminist judgment' provided a reimagining of *Dhaliwal* that relied on a more victim-centred and trauma-informed approach.

The case for such an approach has been further strengthened, moreover, by intervening events. In particular, there have been two key developments post-*Dhaliwal* that are relevant. First, a criminal offence of coercive and controlling behaviour has been created under section 76 of the Serious Crimes Act 2015. This includes within its remit a range of positive acts that produce psychological harms, not all of which would be deemed to be criminal in their own right were it not for their occurrence in a broader abusive context. Though far from unproblematic in respect of its focus upon the actions of the perpetrator rather than the impact thereof upon the victim,²⁵ this offence encroaches further upon the formal principle that the criminal law does not recognise psychological injury and creates the possibility for unlawful act manslaughter to be grounded on criminally coercive and controlling behaviour, irrespective of the existence of physical violence. Importantly, it also recognises that focusing on isolated incidents of domestic violence may distort the significance and severity of effects associated with prolonged exposure to cumulative (and often routinised) experiences of abuse. Whilst this was central to Gurjit Dhaliwal's experience, it was previously difficult to articulate the relevance of that systematic dimension of domestic abuse within a legal frame.

Second, the World Health Organisation has proposed to include, for the first time, in its upcoming version of the International Classification of Diseases (ICD-11) a category of 'Complex-PTSD' which includes many of the adverse psychological consequences observed in domestically abused women. The dilemmas posed by pathologising what are often better understood to be 'normal' responses to abusive behaviour are well-recognised, but in the current context, the significance of this initiative is that it may well make it more likely that the psychological effects that many victims of domestic abuse experience will now fall within

²⁴ Refuge, 'Project Proposal: The Law Commission's Tenth Programme of Law Reform – Recognising the Psychological Impacts of Abuse' (London, Refuge).

²⁵ See, further, V. Bettinson & C. Bishop (2015) 'Is the Creation of a Discrete Offence of Coercive Control Necessary to Combat Domestic Violence' 66(2) *Northern Ireland Legal Quarterly* 179; Tolmie, J. (2017) 'Coercive Control: To Criminalise or not to Criminalise?' 18(1) *Criminology and Criminal Justice* 50.

the parameters of a recognised psychiatric condition, opening scope for claims to ‘bodily injury’ in their own right. This, of course, in turn provides the opportunity to ground an unlawful act manslaughter charge in situations where the victim then takes her own life.

Of course, establishing the existence of a foundational criminal act – whether by virtue of an expanded definition of bodily harm, which includes psychological injury, or a psychiatric diagnosis that better fits the experience of prolonged and systematic domestic abuse – only takes us over the first of the two hurdles identified by the Court of Appeal in *Dhaliwal*. There is still the question of causation. While *obiter* remarks in *R v Dhaliwal* suggest some openness to a finding of causality between the victim’s suicide and the defendant’s abusive behaviour, particularly where the victim was of a ‘fragile and vulnerable personality’, this is by no means certain territory and may need to be approached with caution.²⁶ The relatively recent decision of the Crown Prosecution Service in Staffordshire to bring charges against an abusive partner for unlawful act manslaughter when his victim took her own life might be seen to support the suggestion that the time is ripe for further consideration of the outcome in *Dhaliwal*; but the opportunity to formally (re)test the legal boundaries in this area was somewhat lost by the defendant’s decision to plead guilty ahead of trial.²⁷ That case was followed, in 2018, by another case in which the defendant was charged and convicted of assault occasioning actual bodily harm and coercive control – but *not* manslaughter – when his victim took her own life. On the one hand, this can be read as a rolling back of the approach taken in the Staffordshire case; but on the other hand, it is striking that the trial judge here expressly acknowledged that the defendant’s behaviour “drove [his partner] to hang herself that morning” because he “beat her and ground her down and broke her spirits.”²⁸ This statement, on the face of it, suggests sympathy toward the existence of a necessary causal link between abuse and death.

In evaluating the prospects of success for any causal claim, it is important, of course, to bear in mind the position of the House of Lords in *R v Kennedy (No 2)* that “causation is not a single,

²⁶ Ormerod, D. (2006) ‘Suicide Resulting from Prolonged Abuse – Abuse Causing Psychological Harm but not a Recognised Psychiatric Illness or Condition’ *Criminal Law Review* 923.

²⁷ <http://www.cetusnews.com/views/S1eSHY9tK3QW?cat=news&title=Staffordshire-stalker-guilty-of-killing-ex-lover-he-drove-to-suicide>

²⁸ <http://www.bbc.co.uk/news/uk-england-beds-bucks-herts-4354153>

unvarying concept to be mechanically applied without regard to the context in which the question arises.”²⁹ Research has established convincingly that domestic abuse can reduce the actual and perceived agency of its victims, it can isolate them from support networks and create a sense of hopelessness that is pivotal to proclivities to suicidal ideation and behaviour. In this context, “the abuser does not pull the trigger or provide the rope. The victim may even see the act of suicide as a form of liberation or a final expression of rebellion or subversion against a partner’s control. But this does not mean that the actions of the abuser are not a significant cause of death, and nor does it mean that the act of taking one’s life is a reflection of voluntary agency.”³⁰ Interviews with Refuge practitioners, undertaken by the authors, support this analysis. From case workers’ frontline perspectives, and in line with findings from Refuge’s client database, the causal relationship between a perpetrator’s abuse - particularly where it takes the form of psychological abuse that seeks to control a victim’s behaviour, isolate her from support networks, and / or systematically undermine her self-esteem - and the victim’s hopelessness, despair and suicidality was clear. While some staff expressed reservations about the feasibility of attributing criminal liability to perpetrators, this was typically because they presumed it required proof that abuse was *the* rather than *a* cause of suicide, which may be difficult in situations where clients had ‘chaotic’ lives with concurrent vulnerabilities associated with homelessness, drug or alcohol use, or prior victimisation.

In these regards, the very recent decision in *R v Wallace* may also be instructive.³¹ Here, the Court of Appeal concluded that the actions of the deceased in requesting, and of the Belgian doctors in administering, voluntary euthanasia to relieve the ‘permanent and unbearable physical and psychological pain’³² suffered as a consequence of an acid attack did not necessarily break the causal chain; and as such, it was appropriate for a charge of murder against the perpetrator – his former partner - to be left to the jury. Though we do not know the details of the prior relationship between them, it is clear that the perpetrator’s act of aggression in this case was motivated by jealousy and a desire to control the choices of the victim who wished to move on to a new relationship. This bears many of the hallmarks of

²⁹ [2008] 1 AC 269 at para [15].

³⁰ Munro and Shah, *op cit* n 23, at p. 270.

³¹ [2018] EWCA Crim 690

³² At para [13], per LJ Sharp

domestic abuse, and as such is particularly pertinent for the current discussion. There are, of course, certain key factors that differentiate this case from *Dhaliwal*, not least the violent and severely physically injurious nature of the preceding attack, but it is noteworthy that in this case it was accepted by counsel that, had the victim committed suicide on his own, it would have been at least arguable that the chain of causation to death would have remained intact. Extending the same conclusion to death brought about by voluntary euthanasia, the Court of Appeal emphasised the existence of a direct and discernible connection between the attack and the requested assistance to die, which was 'not blurred...by any pre-existing suicidal tendency' or 'other physical or mental condition' affecting the victim prior to the attack.³³ In many domestic abuse situations that involve more 'mundane' acts of violence and/or controlling behaviour, it may not be possible to attach the victim's desire for death to any one, isolated incident in this way, let alone to one so dramatic. Moreover, as noted above, there may be pre-existing vulnerabilities and conditions (often caused or aggravated by that history of abuse) that complicate the experiential narrative. Nonetheless, by re-affirming the context-specific and fluid nature of causation, the court's approach here signals the *potential* for more progressive interpretations in the type of situation that faced Gurjit Dhaliwal.

In their commentary in the wake of *Dhaliwal*, Horder and McGowan argued that it would have been preferable to charge the defendant with gross negligence rather than unlawful act manslaughter, and to ground liability on his breach of a duty of care owed between spouses. This approach reduces the scope of liability to situations in which a pertinent duty of care is established and relies on frequently opaque assessments of when negligence is sufficient to trigger criminality. In the intervening period, moreover, the specific advantages that the authors claimed in its favour have been significantly undermined. Though Horder and McGowan suggested that "the aggregation of the effects of individual offences against the person, so that the whole can be said to be greater than the sum of the parts"³⁴ would be exceptional (and by implication unwise), this approach has been endorsed in the structure of section 76 of the Serious Crimes Act 2015. Further, the beneficial flexibility that they see in

³³ At para [58], per LJ Sharp

³⁴ J. Horder & L. McGowan (2006) 'Manslaughter by Causing Another's Suicide' *Criminal Law Review* 1035, at p. 1045.

the fact that “the grossness of mistreatment of a spouse or partner is not confined to the impact of specific non-fatal offences...(but) can include all forms of mistreatment including, for example, violence towards children of the family or the imposition of degrading living conditions on the victim”³⁵ has also been extended within that coercive control offence. Having opened the door to this more contextual and cumulative conception of harm within the criminal law, the case against recognising psychological injury as an offence against the person, in its own right and for the purposes of constructive manslaughter, is also diminished.

A Bespoke Offence

As Stannard has observed, though, one of the most significant obstacles to acknowledging psychological forms of injury as bodily harm (and as such capable of grounding manslaughter liability) is the suggestion that it risks opening the floodgates to over-criminalisation. The suggestion in *obiter* remarks in *Dhaliwal* regarding the victim’s particular vulnerabilities can be seen to offer some redress to this concern by highlighting the importance of context in any evaluation both of the severity of injury experienced by the victim and the causal relationship between that injury and her suicide. Indeed, the pre-existing rules on causation in criminal law provide a strong example of how common law can be particularly adept at imposing contextual boundaries. For those who continue to be concerned about this, however, an alternative path is open, which would involve the creation of a specific offence, tailored to the causing of suicide in the context of domestic abuse. Such offences already exist in a number of other jurisdictions. In Moldova, for example, there is an offence of inciting suicide through psychological abuse, with a higher penalty where the victim is materially dependent upon the perpetrator (Article 150 Criminal Code), whilst in Tajikistan there is an offence of driving an individual to suicide by threat, cruel treatment or systematic degrading of their dignity (Article 109 Criminal Code) and in Albania there is an offence of causing suicide because of systematic maltreatment or other systematic misbehaviours that seriously affect the dignity of a person where there is a family or cohabitation relationship (Article 99 Criminal Code). These offences may have the benefit of greater legislative precision, but experience in

³⁵ *Ibid*, at p. 1045

India, where there has been a specific offence of this sort since 1983, does not give confidence that their existence on the statute books will necessarily ensure progressive enforcement.³⁶

Moreover, while it is still early days in the implementation of the coercive and controlling behaviour offence in England and Wales, experience to date in relation to its investigation and prosecution has been disappointing, with difficulties in ensuring that the potentially criminal behaviour in question is treated as such by criminal justice personnel.³⁷ In this context, another tailored offence risks ghetto-ising domestic abuse, and providing limited justice for victims whilst ensuring a symbolic victory in terms of formal legislative intent.

Conclusion

Despite not having yet ratified it, as a signatory to the Council of Europe Convention on Preventing and Combatting Violence Against Women and Domestic Violence, the UK has committed – amongst other things – to design a comprehensive framework, policies and measures for the protection of and assistance to all victims of violence against women and domestic violence. Yet, the risk assessment and safeguarding procedures of its statutory agencies, including in the criminal justice system, do not give sufficient priority to the risk of harm that victims of domestic abuse pose to themselves, and its failure to grapple critically and reflectively with the question of attributing liability for manslaughter when a victim takes her own life is unsustainable. We have argued in this article that the narrow approach in *Dhaliwal* is ripe for re-examination for a number of reasons. Recent developments in law and psychiatry, as well as the authors' empirical research on the scale, mediators and moderators of suicidality amongst domestically abused women, add significant force to that imperative.

³⁶ Kishwar, M. (2000) 'Laws against domestic violence: underused or abused?' *Manushi*, 120, 17- 24.

³⁷ C Bishop and V Bettinson, 'Evidencing Domestic Violence, including Behaviour that Falls Under the New Offence of 'Controlling or Coercive Behaviour'' (2017) 22(1) *International Journal of Evidence and Proof* 3.