

November 2022

The mental element in homicide

A report of public opinion research conducted by
BritainThinks on behalf of the Scottish Law Commission

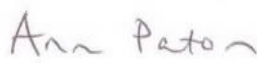
Table of Contents

Introduction	3
Chapter 1: Executive summary	4
Chapter 2: Background and methodology	7
The context to the research	7
Research objectives	7
Methodology	7
Sample	8
Chapter 3: How to read and interpret this report	9
Chapter 4: Spontaneous awareness of Scots homicide law	10
Public interest and engagement with the topic	10
Awareness of the offence of murder	11
Awareness of the offence of culpable homicide	11
Chapter 5: Views on current Scots homicide law	13
Views on definitions of murder and culpable homicide	13
Views on language around 'wickedness'	14
Chapter 6: Views on specific offences	17
Killing without intention to injure	17
Killing with a single punch	19
Chapter 7: Views on defences	21
Self-defence: Killing to prevent rape	22
Self-defence: Killing in cases of domestic abuse	23
Provocation: Killing as a result of assault	24
Provocation: Killing as a result of discovery of sexual infidelity	26
Killing as a result of coercion	27
Chapter 8: Conclusions	28
Appendix	29
A.1. Detailed sample breakdown	29
A.2. Content shared with participants	30
A.3. Quotes from participants	33

Introduction

The Scottish Law Commission's project to examine the Scots law of homicide was announced in the Commission's Tenth Programme of Law Reform, published in February 2018. The Commission's aim is to review this important and sensitive area of the law to consider whether it needs to be modernised in any way and, if so, to develop proposals for reform. Our Discussion Paper on the Mental Element in Homicide, which sought views on possible reform of the law in this area, was published on 27 May 2021. The consultation period for the Discussion Paper closed on 15 October 2021.

Whilst the Discussion Paper drew a healthy number of consultation responses from legal professionals, academics and interested organisations, no consultation responses were received from members of the public. We consider that, in such a moral, contentious and complex area of law, responses and opinions from the public are required to inform our development of policy proposals for law reform. As such, Britain Thinks were commissioned, after a procurement exercise, to conduct some public opinion research on behalf of the Commission. We are grateful for their expertise and effort in assisting us to gather and understand a sample of the Scottish public's views on key elements of the Scots law of homicide as set out in this report.



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Chair, Scottish Law Commission

Chapter 1: Executive summary

1.1 The Scottish Law Commission (the Commission) is currently undertaking a review of the mental element in homicide. As part of this activity, BritainThinks were commissioned to understand the Scottish public's views on current Scots law concerning murder and culpable homicide and uncover perceptions on key elements of this review. These are:

- Whether the public thinks that a killing *without any specific intention to injure* could or should in certain circumstances be classified as 'murder'.
- How the public think a killing resulting from a single punch should be classified under Scots law.
- Which defences the public think should be available in five particular circumstances of most interest to this exercise. For example, in the context of:
 - Domestic violence
 - Preventing rape or other sexual assaults
 - Assault
 - Discovering sexual infidelity
 - Coercion
- In cases where the public think a defence should be available, the Commission wants to understand if the public feel these defences should be partial (leading to a conviction of culpable homicide) or complete (leading to acquittal).

1.2 Research was qualitative in nature, to allow the time and space to meaningfully engage the public in the often complex issues at hand, and to explore drivers of opinion on these research questions. This means that the findings below do not convey the incidence of views across the Scottish population but within our qualitative sample which was recruited to represent a range and diversity of demographics and characteristics.

The following is a summary of the key findings of this research:

What do the public know about current Scots homicide law, and what do they think about it?

1.3 Public interest in the topic of homicide is high, and there is spontaneous awareness of the current bipartite structure of homicide law in Scotland.

- Unprompted, the public understand that intention and premeditation are important criteria that need to be met for someone to be convicted of murder in Scotland. Most are also aware that a murder conviction carries a mandatory life sentence.
- The public know there are instances where a person is killed but the accused is not convicted of murder and are familiar with the term 'culpable homicide'. However, this term is not often used spontaneously, with the public often referring to 'accidental death' or 'manslaughter' to describe these types of killings instead.

1.4 When reviewing current Scots homicide law, the public do raise some concerns about the term 'wicked', which isn't felt to help clarify the offence of murder.

- Many feel the term 'wicked' is subjective and outdated, and associate it with individuals' innate nature, rather than an individual act. The public agree that intent to

kill and / or recklessness are important criteria in convicting a person of murder but feel the term 'wicked' does not further clarify these criteria.

What offence do the public think killing without intent to injure and a single punch that kills should be considered as?

1.5 When thinking about killing without intent to injure, the public feel an act should be judged as murder if the accused exhibits extreme recklessness and / or the act is proven to be premeditated.

- For the public, extreme recklessness is the key factor in deciding whether an instance of killing without intent to injure should be considered murder. They describe 'extreme' recklessness as a situation where it can't reasonably be expected that someone would not be seriously harmed or killed by their actions. This was understood to be an objective test.
- Alongside this, the premeditation of the act is considered important, as most believe that planning an act in advance would mean the accused had the time to consider the potential consequences of their actions.
- The public also say that understanding whether the accused intended to cause harm (including psychological harm) is helpful in determining whether a person should be charged with murder as opposed to culpable homicide.

1.6 The public feel most comfortable with a single punch that kills being defined as a new proposed offence of 'assault causing death'.

- While the public agree that a single punch that kills shouldn't be classified as murder, many also feel uncomfortable with this act being categorised as culpable homicide. They note that fighting is a common occurrence meaning that in many instances the outcome of death would be 'bad luck'. However, it's seen to be important that there are consequences that take into account the victim's death, meaning an offence of 'assault causing death' is felt to be more appropriate.

What defences do the public think should be available in relation to murder, and should these be partial or complete?

1.7 The public question whether a defence should be available in situations where the accused has had time to consider their actions, the potential consequences, and alternative ways to remedy the situation.

- For example, the public do not think that provocation through discovery of text messages proving infidelity, or receiving verbal abuse, should be available as defences for killing a person. In both cases, they feel the accused would have the space to consider the consequences of killing a person and take more proportionate action. The public also object to the use of coercion as a defence in almost every case, as they see clear alternatives to killing, most notably asking the police for help.
- However, third party intervention in cases of preventing rape provides a notable exception to this, as even though the public believe that the third party may have had time to rationally consider their response, the seriousness of rape is felt to outweigh this.

1.8 The public think an available defence should be complete in instances where the accused's physical wellbeing and life are under immediate threat.

- For example, the public think a complete defence should be available in cases of killing to prevent rape, killing in response to extreme physical provocation, and killing in response to a specific instance of domestic violence.
- In these cases, there is less concern about recourse for the death of another, as the victim was intent on seriously harming someone else.

1.9 The public mostly think an available defence should be partial when an act is perceived as blameworthy, often because they think the person reasonably had the time to make a different choice, but that the act should not be considered murder.

- For example, the public often suggest a partial defence should be available to those who witness an attack and kill stepping in to protect another. Here the public think it should be recognised that the accused did not intend to kill but could probably have taken different, more proportionate action in response.
- The public also think a partial defence should be available in cases where circumstances mean the accused was not in their 'right mind', such as in cases when the accused is experiencing domestic violence, but not under immediate threat, and when the accused discovers infidelity 'in the moment'. In both situations it's acknowledged that even though the accused might have intended to kill, the circumstances mean they were not acting rationally. It's important to note that, in both these circumstances, many people hope that a defence would usually be unsuccessful but feel the option should be open to the accused to allow for exceptional circumstances.

Chapter 2: Background and methodology

The context to the research

- 2.1 The Scottish Law Commission is undertaking a project to examine Scots homicide law. The work is focussed specifically on the mental element in homicide, exploring how someone's mindset when committing a crime might impact the offence they are convicted of and the defences they might use. Key to this project is exploring if and how the law in this area might be modernised.
- 2.2 In 2021, the Commission published a discussion paper for consultation on the mental element in homicide. The response to this paper was exclusively from stakeholders and legal professionals, with no responses from members of the public with no legal training.
- 2.3 Given the sensitive nature of this area, the Commission appointed BritainThinks to consult the Scottish public on this vitally important area of the law.

Research objectives

- 2.4 The research aimed to understand:
- How much, if anything, the Scottish public know about Scots Law concerning homicide.
 - What the Scottish public think of the current laws around murder and culpable homicide.
 - Which offence the Scottish public think is most appropriate in cases of killing without a specific intent to injure and killing with a single punch.
 - What the public think about the defences of provocation and coercion, and about defences where there has been a killing in the context of:
 - Domestic abuse
 - Attempted rape.
 - If they think defences should be available, whether the public think these defences should be partial (leading to a conviction of culpable homicide) or complete (leading to acquittal) in each case.

Methodology

- 2.5 BritainThinks conducted research with members of the Scottish public, between 10th and 28th October 2022.
- 2.6 As the objectives and topics explored as part of this research are complex, we adopted a qualitative, 'deliberative-style' approach. This approach allowed the time and space to provide participants with the information they needed to meaningfully comment on research questions and ensured we could understand what was driving their responses. A quantitative approach – which would instead gather numerical data – would not accurately convey public sentiment, as there would not be enough time in a survey to upskill participants to ensure they could confidently express their views on the research questions.

2.7 Participants were recruited to take part in either:

- **An online focus group conducted via Zoom.** We conducted six two-hour focus groups, each containing five or six participants. All participants were digitally confident and able to get online.
- **A one-to-one interview conducted via telephone.** Four one-hour telephone interviews took place with individuals who were digitally disengaged due to confidence, finances, or rurality. This group also included some participants who had some experience of violent crime, with depth interviews allowing the time and space for them to share their potentially complex experiences of this issue.

2.8 Focus groups and interviews followed the same format. Please see below for a basic outline of the structure followed and the topics covered in each focus group / interview:

1	Spontaneous awareness of Scots homicide law	What do the public know about murder and culpable homicide?
2	Views on current Scots homicide law	What do the public think about the law? How do they feel about the language used?
3	Views on offences	Presenting specific scenarios and asking whether the offence should be murder, culpable homicide, or neither
4	Views on defences	Presenting specific scenarios and asking whether the accused should be able to plead a defence, and, if so, whether this should be a complete or partial defence

Sample

2.9 Overall, 36 individuals were consulted as part of this research, representing a broad cross-section of the Scottish public. These individuals were recruited from a range of locations across Scotland, to ensure that we heard from those living in urban, suburban, and rural areas.

2.10 Each focus group was homogenous in terms of gender, age, and socioeconomic grade, to ensure that participants felt comfortable sharing their honest thoughts and opinions throughout the session. We also ensured that the sample included representation of those from ethnic minority backgrounds and those who are religious.

2.11 The sample purposely excluded anyone working in law or law enforcement and those working for victims' rights / support charities, to ensure that all participants were uninformed prior to taking part.

2.12 For a more detailed breakdown of the sample, please see the Appendix.

Chapter 3: How to read and interpret this report

- 3.1 Due to the qualitative nature of this work, the findings are indicative only. Where we express the views of 'many' or 'some', this refers to a proportion of our sample and not the wider population of Scotland. The aim is not to show how prevalent views are within the general population of Scotland, but rather demonstrate the breadth of experience and opinion within our sample, which *may* be indicative of the wider population.
- 3.2 The report is in present tense to help convey the broader themes that have been drawn out in analysis, rather than simply providing an account of each research session.

Chapter 4: Spontaneous awareness of Scots homicide law

Key findings:

- **Public interest in the topic of homicide is high, and there is spontaneous awareness of the current bipartite structure of homicide law in Scotland.**
 - Unprompted, the public understand that intention and premeditation are important criteria that need to be met for someone to be convicted of murder in Scotland. Most are also aware that a murder conviction carries a mandatory life sentence.
 - The public know there are instances where a person is killed but the accused is not convicted of murder and are familiar with the term ‘culpable homicide’. However, this term is not often used spontaneously, with the public often referring to ‘accidental death’ or ‘manslaughter’ to describe these types of killings instead.

What we discussed

4.1 To understand baseline understanding and awareness of homicide law in Scotland, we asked participants about:

- Their existing knowledge of this area, including their understanding of the terms murder and culpable homicide.
- How the offences of murder and culpable homicide differ in terms of outcomes.
- The circumstances in which someone may not be convicted of murder even if they have killed another person.

Public interest and engagement with the topic

4.2 Overall, the public are engaged and interested in the topic of homicide. They frequently cite stories they have heard about in the media or through word of mouth, from fights in local bars that have resulted in a death, to cases that have received more national coverage in Scotland, such as the 2014 Glasgow bin lorry crash. Many also say they have an interest in crime dramas and documentaries and draw on these sources of information when they talk about what they know about murder and other unlawful killings.

“I’m not an expert, but it’s not unknown to me – my knowledge comes from TV, documentaries, and books. I don’t know the legislation that sits behind it.”

- Male participant, victim of crime

Awareness of the offence of murder

4.3 The public feel confident in their knowledge about the offence of murder. This is primarily due to hearing about the offence through the media and word of mouth. In line with current law, it is generally believed that one of the primary factors defining murder is the intention behind the act, with many using the language of ‘premeditation’ in this context.

4.4 There is some awareness that murder carries a mandatory life sentence in Scotland. However, there is a lack of clarity around what this means in practice, due to a perception that even when the accused is convicted of murder and given a life sentence, they may not spend the rest of their life in prison, due to early release.

“Murder is premeditated. You’ve planned it – it’s not a spur of the moment thing or an accident.”

- Female participant, aged 18-49, AB

“I see it as murder’s life, a life sentence. That’s all really.”

- Male participant, aged 50+, DE

Awareness of the offence of culpable homicide

4.5 The public are aware that there are circumstances where a person may have killed someone but isn’t convicted of murder. They point to situations where a killing was unintended, indirect or accidental as examples of this type of crime, often drawing comparisons between these types of killings and the ‘intentional’ act of murder.

4.6 Although there is awareness of the term ‘culpable homicide’, few use the term spontaneously. Instead, they refer to ‘accidental death’ or the English common law term of ‘manslaughter’, before being reminded of the offence of culpable homicide in Scots Law specifically.

4.7 Compared with murder, there is also less clarity around the sentences that might be applicable when someone is convicted of culpable homicide.

4.8 The public expect circumstances that may result in a conviction of culpable homicide – as opposed to murder – to include:

- Killing as a form of **self-defence**, particularly in cases of domestic violence
- Killing whilst **under the influence** (e.g., influenced by alcohol or drugs)
- Causing death through **dangerous driving**
- Having **reduced mental capacity**, such as offences committed by individuals affected by mental illness or a learning disability
- A **punch that results in death**, normally mentioned in the context of physical fights in pubs, bars, and clubs
- Cases of **negligence in the workplace**

- 'Indirect' killing through **sale of drugs** which later result in death

"For example, you're in your car [...] You think you're not over the limit, but you might be slightly over the limit, and you knock somebody down like a cyclist of whatever, and they die as a result of it. You didn't plan to go out and kill them."

- Female participant, victim of crime

Chapter 5: Views on current Scots homicide law

Key findings:

When reviewing current Scots homicide law, the public do raise some concerns about the term ‘wicked’, which isn’t felt to help clarify the offence of murder.

- Many feel the term ‘wicked’ is subjective and outdated, and associate it with individuals’ innate nature, rather than an individual act. The public agree that intent to kill and / or recklessness are important criteria in convicting a person of murder but feel the term ‘wicked’ does not further clarify these criteria.

What we discussed

5.1 Next, we presented the basic information about the bipartite structure of Scots homicide law, to gauge:

- How the public feel about the law as it stands.
- What they think of the language used, including the use of the term ‘wicked’.

5.2 Information provided to participants:

Murder

Murder is the more serious of the two offences. It carries a mandatory life sentence, reflecting its severity. For a conviction of murder, it must be proven that the accused had the required *mens rea*, or mental element. The *mens rea* of murder has two branches: it requires the accused either to have a wicked intention to kill, or to act with wicked recklessness, (i.e., not caring whether the victim lives or dies). The person convicted also has to live with the moral implications of being labelled a ‘murderer’ by society.

Culpable homicide

Culpable homicide is the less severe of the two offences. It ‘catches’, or covers, unlawful killings which are blameworthy, but not sufficiently so as to be murder. It is therefore a very broad category. Unlike murder, culpable homicide does not carry a mandatory life sentence. Rather, judges have discretion as to the sentence that is handed down to the accused.

Views on definitions of murder and culpable homicide

5.3 When presented with information about the offences of murder and culpable homicide, the public feel this is broadly in line with their expectations, aligning with their perceptions of what each offence means and their respective outcomes. In particular, they feel that

this fits with their perceived distinction of murder as ‘intentional’ and culpable homicide as ‘accidental’.

5.4 The public see sentencing as an important element in differentiating between murder and culpable homicide, as they feel sentencing should reflect the severity of the act in question. They are therefore pleased (but unsurprised) to see that murder carries a mandatory life sentence.

5.5 The ambiguity surrounding sentencing for culpable homicide is initially considered troubling. Many express concerns that the broad range of sentences that can be handed down to those convicted, and judge subjectivity, lead to sentences that don’t adequately reflect the nature of a crime. However, after consideration and discussion, the public acknowledge how important flexibility is in this part of the law, to be able to take into account the specific circumstances of each offence and ensure a just sentence is handed down in cases where acts are perceived as less blameworthy.

“This one [culpable homicide] is a grey area [...] The last thing about judges having discretion says to me there’s a range of outcomes from no conviction to up to but not quite as much as murder.”

- Male participant, aged 18-49, C1C2

5.6 The public feel that being labelled a ‘murderer’ by society is a less important distinction between murder and culpable homicide than sentencing. Furthermore, the public acknowledge that offenders will also be ‘tried in the court of public opinion’, so someone convicted of culpable homicide may still be labelled a murderer by society, depending on collective perceptions of the offence committed.

5.7 The language around *mens rea*, or the mental element, in the definition of murder is also difficult for some. A few feel that the term might be too subjective and that it must be difficult to provide definitive evidence of a person’s mental state. Some misinterpret the term, assuming it is related to mental illness and / or capacity of the accused, rather than their mindset at the time of the offence. This points to a potential need for this to be better explained to the public.

“I think someone’s mindset committing that crime is a continually moving thing. It could change in the minutes, days, weeks after [...] Nailing that down in law seems to be like trying to catch a cloud in your hand.”

- Male participant, aged 50+, AB

Views on language around ‘wickedness’

5.8 When prompted, there is strong agreement among the public that the concept of ‘wickedness’ should not be part of homicide law in Scotland.

5.9 The public spontaneously notice and question the language of ‘wickedness’ that is central to Scots law around homicide – with murder offences being judged on either the accused having had wicked intent to kill or having acted with wicked recklessness. The

majority hold concerns around what exactly 'wicked' means in this context and how it is applied in practice:

- Most have a basic understanding of what the term itself means. However, the idea of 'wickedness' is felt to be subjective, in that interpretations of what it means to be wicked may vary from person to person – and that judges' own views of what this means may vary too.
- The term 'wicked' is associated with individuals and their personalities rather than acts. The public struggle to understand how an act could be defined as wicked when they believe that people are either inherently wicked or they are not.
- 'Wicked' is also perceived to be an old-fashioned, outdated term that is now rarely used. Some also point out that where it is used in present day, it is often used to describe something good rather than bad.

"It feels like a historic term to me, I don't think it's used in modern language very often."

- Male participant, aged 18-49, C1C2

"'Wicked' and 'evil' is who you are as a person. We can all do bad things, but that doesn't make us a bad person."

- Female participant, aged 18-49, DE

"It's very subjective. Any time when you use an adjective to describe someone is very much one person's opinion versus another's... and the word 'wicked' carries some weighty emotions behind it."

- Male participant, aged 50+, AB

5.10 Furthermore, the term 'wicked' isn't felt to further clarify the two most important elements of the definition of murder for the public 'intent to kill' or (extreme) 'recklessness'.

5.11 The public believe that having 'intent to kill' should be a defining factor of whether an accused is convicted of murder, reflecting their baseline understanding of what the offence of murder means. However, they feel that the adjective 'wicked' does not add anything helpful to their understanding of intention. In their view, having an intention to kill is always 'wicked' anyway and therefore does not require additional labelling.

5.12 When considering 'wicked recklessness', the idea itself is understood, but again, participants question how appropriate a term 'wicked' is in this context. When presented with scenarios where a person has been killed as a result of recklessness, the public can easily identify instances in which this recklessness is not 'wicked' but they feel should still constitute murder (see the killing without intent to injure examples below). Instead, on prompting, the public prefer to view this in terms of 'extreme' recklessness, where an individual commits an act where it can be reasonably foreseen that someone would be seriously harmed or killed as a result.

"I think the word 'wicked' is probably not the right one to use today. I think it's just either to have an intention to kill or act with recklessness. I don't think the term 'wicked' actually works – it's quite old fashioned."

- Female participant, victim of crime

"If someone's gone out with intent to kill, that's murder to me [...] Does 'wicked' add anything to the clarity of what murder means? Does it need to be there?"

- Male participant, aged 18-49, C1C2

Chapter 6: Views on specific offences

Killing without intention to injure

Key findings:

When thinking about killing without intent to injure, the public feel an act should be judged as murder if the accused exhibits extreme recklessness and / or the act is proven to be premeditated.

- For the public, extreme recklessness is the key factor in deciding whether an instance of killing without intent to injure should be considered murder. They describe 'extreme' recklessness as a situation where it can't reasonably be expected that someone would not be seriously harmed or killed by their actions. This was understood to be an objective test.
- Alongside this, the premeditation of the act is considered important, as most believe that planning an act in advance would mean the accused had the time to consider the potential consequences of their actions.
- The public also say that understanding whether the accused intended to cause harm (including psychological harm) is helpful in determining whether a person should be charged with murder as opposed to culpable homicide.

What we discussed

6.1 To understand the public's views on this, we presented them with three scenarios in which the accused did not have specific intent to injure:

- A scenario in which a climate change activist drops a concrete block on a motorway to raise awareness of their cause, but their actions result in an accident that kills a motorist.
- A scenario in which a woman sets fire to a flat owned by her ex-fiancé's new partner. Although the woman checks to ensure the flat is empty, the fire spreads, killing a person living upstairs
- A scenario in which a man is trying to escape the police in a car. While he is driving fast in a built-up area, he hits a pedestrian who is crossing at a green man signal, killing them

6.2 For each scenario, we asked participants whether the accused should be convicted of murder or culpable homicide.

What the public thought

6.3 In instances of killing without specific intention to injure, the public feel the accused should be charged with murder in cases where the act is premeditated, the accused displays extremely reckless behaviour, or where the accused's actions suggest that they intend to cause a person harm.

6.4 Where the accused has planned their actions rather than acting in a 'hot-headed' or reactive state, the public tend to think that murder is the most appropriate offence. In these situations, it is often felt that the accused would have had the time to consider the possible consequences of their action and taken a different course.

6.5 For example, in a situation where the accused sets fire to an empty flat and kills others living in the building, the public think the act shows sufficient premeditation to constitute murder. It is assumed that the accused must be aware that fire spreads quickly and that it is highly likely to spread to other flats in the building. They therefore see it as reasonable to assume that the accused took this risk into account when starting a fire.

"It comes down to intent. [The intent is] to frighten someone, but there's got to be awareness around what you're doing. It's a ground floor and it's going to spread. I think the key word is recklessness, that's why I'd consider it murder."

- Male participant, aged 18-49, C1C2

"I don't think he's gone out with intent and he's not thinking straight. He's panicked. So, I think it's culpable homicide. He did not intend to kill someone."

- Female participant, aged 50+, C1C2

6.6 On the other hand, in the example where the accused kills someone whilst trying to evade the police, the public response is more mixed. Many say that since his actions were in the 'heat of the moment', he should be convicted of culpable homicide. These participants emphasise that the accused's intent was to escape police rather than cause any harm, and

that in this situation he would have had little time to consider the possible consequences of his actions.

6.7 The public feel that an act should be considered murder in cases where the accused has exhibited extreme recklessness. By this they mean engaging in activity that shows a lack of regard for other people's lives and that cannot reasonably be expected not to seriously harm or kill someone.

"When you're intentionally pushing a concrete block onto a motorway, that's going to harm somebody."

- Female participant, aged 18-49, DE

6.8 The public point to the example where an activist drops a concrete block onto a motorway, killing a motorist, as an act of extreme recklessness. This is also a good example of where the public consider an act worthy of the offence of murder because of its recklessness but do not believe it to be 'wicked', suggesting the use of the term 'wicked' in the definition of murder is not appropriate.

6.9 For those members of the public who consider the act of killing someone while escaping the police to be murder, the accused's actions did display extreme recklessness. In particular, they note that he was driving without care of the harm he

might do to others. The fact that the accused was evading the police also implies that he was engaged in wrongdoing, further exacerbating the seriousness of his actions.

6.10 It should also be noted that in cases where the public consider the accused acted with extreme recklessness, they want to see justice for victims (and their families) that they consider to be blameless. In cases such as these, this means a life sentence for some, and therefore they believe a conviction of murder to be most appropriate.

6.11 When determining whether these offences should be considered murder or culpable homicide, some members of the public also consider whether the accused intended to cause harm.

"She set out to do something malicious. She didn't want to kill anyone, but because of it, she's killed someone."

- Male participant, aged 50+, DE

In cases where the accused planned to cause harm, including psychological harm or harm to someone other than the victim, the public see this as evidence that an act should be considered murder. The example of the accused setting fire to her fiancé's new partner's flat is raised in this context, as it is believed she was intending to cause this person extreme harm, whether or not the intent was loss of life.

6.12 For a few, the fact that the accused checked the flat before setting fire to it, is an illustration she was not intending to cause any harm, and therefore evidence the act should be considered culpable homicide. However, others do not share this opinion.

Killing with a single punch

Key findings:

The public feel most comfortable with a single punch that kills being defined as a new proposed offence of 'assault causing death'.

- While the public agree that a single punch that kills shouldn't be classified as murder, many also feel uncomfortable with this act being categorised as culpable homicide. They note that fighting is a common occurrence meaning that in many instances the outcome of death would be 'bad luck'. However, it's seen to be important that there are consequences that take into account the victim's death, meaning an offence of 'assault causing death' is felt to be more appropriate.

What we discussed

6.13 To understand the public's views on this, we presented them with a scenario in which a person is killed by a single punch. We then asked participants whether the accused should be convicted of murder or culpable homicide. After a short discussion, we also discussed the possible introduction of a new offence of 'assault causing death'.

What the public thought

- 6.14 The public agree that killing with a single punch should not constitute murder. They point to a lack of premeditation and planning and the absence of intent to kill as key evidence for this. They also note that fights (in particular those which consist of a single punch only) often don't end in death, so few see this as exhibiting recklessness either.
- 6.15 There is also significant apprehension in classifying this offence as culpable homicide. Again, the fact that engaging in a fight is not felt to be an uncommon experience, and that in most cases this would not result in death, means many view the accused in this situation as 'unlucky'. Some also note that if the accused was under the influence of alcohol, they would likely be acting in a way that was not typical of their behaviour, further adding to an assessment of the situation as an accident.
- 6.16 The exception to this discomfort in labelling a single punch that kills as culpable homicide is when the circumstances around the event suggest it was not bad luck – for instance, if the accused has a history of violence or had a difficult relationship with their victim.
- 6.17 On the whole, the public feel most comfortable with labelling a single punch that kills as 'assault causing death'.
- 6.18 While the public want to see proper recourse for the death of a person, they are not comfortable with the severity of an offence of culpable homicide or murder. This new proposed offence is felt to better reflect and recognise the act and its outcome.

"The [one to] blame is the alcohol. I don't see it as murder or culpable homicide. He's had a drink and some words have been said and he's turned around and thumped him. It's unfortunate that it ended the way it did."

- Female participant, aged 50+, C1C2

Chapter 7: Views on defences

Key findings:

The public question whether a defence should be available in situations where the accused has had time to consider their actions, the potential consequences, and alternative ways to remedy the situation.

- For example, the public do not think that provocation through discovery of text messages proving infidelity, or receiving verbal abuse, should be available as defences for killing a person. In both cases, they feel the accused would have the space to consider the consequences of killing a person and take more proportionate action. The public also object to the use of coercion as a defence in almost every case, as they see clear alternatives to killing, most notably asking the police for help.
- However, third party intervention in cases of preventing rape provides a notable exception to this, as even though the public believe that the third party may have had time to rationally consider their response, the seriousness of rape is felt to outweigh this.

The public think an available defence should be complete in instances where the accused's physical wellbeing and life are under immediate threat.

- For example, the public think a complete defence should be available in cases of killing to prevent rape, killing in response to extreme physical provocation, and killing in response to a specific instance of domestic violence.
- In these cases, there is less concern about recourse for the death of another, as the victim was intent on seriously harming someone else.

The public mostly think an available defence should be partial when an act is perceived as blameworthy, often because they think the person reasonably had the time to make a different choice, but that the act should not be considered murder.

- For example, the public often suggest a partial defence should be available to those who witness an attack and kill stepping in to protect another. Here the public think it should be recognised that the accused did not intend to kill but could probably have taken different, more proportionate action in response.
- The public also think a partial defence should be available in cases where circumstances mean the accused was not in their 'right mind', such as in cases when the accused is experiencing domestic violence, but not under immediate threat, and when the accused discovers infidelity 'in the moment'. In both situations it's acknowledged that even though the accused might have intended to kill, the circumstances mean they were not acting rationally. It's important to note that, in both these circumstances, many people hope that a defence would usually be unsuccessful but feel the option should be open to the accused to allow for exceptional circumstances.

Self-defence: Killing to prevent rape

What we discussed

7.1 To understand participants' views on this defence, we presented participants with a scenario in which a person kills to prevent rape. We then asked the public if:

- They thought the accused should be able to plead a defence.
- If so, whether a successful defence should be partial (leading to a conviction of culpable homicide) or complete (leading to acquittal).

7.2 We also probed further to understand if views still applied in cases where the accused was a male and in cases where the accused was a third party.

What the public thought

Should this defence be available?

7.3 The public feel strongly that the defence of killing to prevent rape should be available, both if the accused was the intended victim of the sexual assault or was a witness to it. They consider rape a heinous act and think this should be considered when examining a case like this. Though most believe that use of a defence by a third party is generally less acceptable due to the perception that there would be more time to think rationally, the seriousness of rape means that the public are more likely to accept the use of a defence in this case.

If this defence should be available, should it be partial or complete?

7.4 The public feel that this defence should be complete in cases where the accused was the intended victim of the rape. They emphasise that in this case it would be reasonable to assume that the accused felt their life and / or wellbeing was under threat. Furthermore, they expect that the accused was most likely intending to stop the attacker as opposed to killing them.

"It comes under self-defence again. She probably doesn't have any idea how far this will go. It's a very desperate situation [...] I think she should be acquitted."

- Male participant, aged 18-49, C1C2

7.5 In cases where the accused is male, the public strongly believe that the accused should be able to plead this defence in the same way as females.

7.6 In situations where the accused is instead a third party who witnesses the act and intervenes, the public are more likely to suggest the defence should be partial in this circumstance, leading to a conviction of culpable homicide. Intervening to prevent the

"It's a bit of an excessive force one. It's one thing attacking him, it's another thing if he's picked up a rock."

- Male participant, aged 50+, DE

rape of another person is viewed as a less immediate and reactionary response than if the accused was the person being attacked. Most expect that a third party would have more choice about how to intervene in this situation and should therefore try to avoid excessive force.

7.7 There is some discussion around how the accused would know that rape was going to happen and the impact this should have on the success of the defence in court. Most agree that there would need to be physical, violent contact for this defence to be

“There needs to be some form of physical, violent contact for her to claim that defence.”

- Female participant, aged 18-49, DE

successful, although some question what the threshold would be; for example, touching someone without consent is perceived as being very different to attempted penetration in determining if a defence should be successful.

Self-defence: Killing in cases of domestic abuse

What we discussed

7.8 To understand participants' views on this defence, we presented participants with a scenario in which a person kills as a result of domestic abuse. We then asked the public if:

- They thought the accused should be able to plead a defence.
- If so, whether a successful defence should be partial (leading to a conviction of culpable homicide) or complete (leading to acquittal).

7.9 We also probed further to understand if participants' views still applied in cases where the fatal act occurs when the accused is not in immediate danger and in cases where the victim was asleep at the time of the attack.

What the public thought

Should this defence be available?

7.10 Across the board, the public feel that the defence of being a victim of domestic abuse should be available. Many see longstanding abuse in the relationship as contributing to the person committing the fatal act and believe this should be considered as part of any trial.

If this defence should be available, should it be partial or complete?

7.11 The public do not feel that the defence can be confidently applied the same way in every case.

7.12 For example, in cases where the accused's life and physical wellbeing is under immediate threat, or where it can be proven that the accused was acting to protect themselves from severe physical harm, it is felt that a complete defence is most appropriate.

“I think acquittal because she reached the end of her tether and she was defending herself. When you're in that situation, sometimes you just can't get out. Obviously something has pushed her a step too far.”

- Female participant, aged 50+, C1C2

7.13 However, in cases where the accused is not under immediate threat, but has experienced physical abuse in the past, the public are often more comfortable with a partial defence being available. Here, many acknowledge that the accused might reasonably assume that their life was under threat and act accordingly. Some also suggest that past abuse might have taken its toll on the emotional wellbeing of the accused, meaning that even if the accused was not under threat of immediate physical harm, she still could 'snap' under the circumstances. However, the premeditation of the act means that most feel uncomfortable with an outcome of acquittal in this circumstance.

7.14 Although the public think a defence of killing because of domestic violence should be available across the board, there are some instances in which they hope it would not be successful (i.e., that the accused would be found guilty of murder). Most notable was the example where the victim was asleep at the time of the killing. Some also question if a partial defence should be unsuccessful in cases where there was enough time between an attack and the killing for the accused to seek help or remove themselves from the household (although this view is not widely held).

"It is not self-defence if there is not imminent danger."

- Female participant, aged 18-49, DE

"That takes it to another degree of seriousness. It's becoming more premeditated then and starting to tick the murder box."

- Male participant, aged 50+, AB

Provocation: Killing as a result of assault

What we discussed

7.15 To understand participants' views on this defence we presented participants with a scenario in which a person kills a person after being physically provoked by them. We then asked participants if:

- They thought the accused should be able to plead a defence.
- If so, whether a successful defence should be partial (leading to a conviction of culpable homicide) or complete (leading to acquittal).

7.16 We also probed further to understand if participants' views still applied in cases where the accused was a witness to the assault (including if they were related to the person assaulted) and if the provocation was verbal rather than physical.

What the public thought

Should this defence be available?

7.17 The public feel the defence of provocation as a result of assault should be available, as the accused likely did not have an intention to kill, and their actions were clearly not

premeditated. This was true also in cases where the accused was a witness to the assault and not the person being attacked themselves.

- 7.18 However, the public were clear that the defence of provocation should not be available to someone in cases of verbal provocation. They express that the accused would have more options in terms of how to respond rather than acting in the heat of the moment, such as ignoring the person shouting verbal abuse and walking away from the situation.

"The person used words, you just have to rise above it and not retaliate [...] Punching's not a proportionate reaction."

- Female participant, aged 18-49, AB

If this defence should be available, should it be partial or complete?

"Hitting his head on the pavement is what killed him. [The accused's] intention wasn't to kill him, just to punch him."

- Male participant, aged 50+, DE

- 7.19 The public feel the defence of provocation as a result of assault should be complete in cases where the accused is under extreme physical threat and / or is fearing for their life. However, in cases where the accused and victim are landing

relatively equal blows as part of a fight, many feel a partial defence would be more appropriate. As in the discussion above of a single punch that kills, the public feel that there should be some recourse for the life lost, making acquittal inappropriate, but the perceived 'accidental' nature of death as a result of a fight makes a conviction of murder feel inappropriate too.

- 7.20 In cases where the accused is a witness of the physical assault rather than the victim, many suggest a defence should be partial. Intervention in such a dispute is seen as a choice, with these members of the public believing that another, less forceful option would be available to the accused. As a result, the possibility of acquittal does not feel appropriate.

- 7.21 Many hope that this partial defence would only be successful in cases where it could be proved that the accused was intervening because the individual being assaulted was at extreme risk or that the accused acted with an appropriate level of force. The public feel that the relationship of the accused to the victim of the assault should not make a difference to how the defence is considered or if it is successful.

Provocation: Killing as a result of discovery of sexual infidelity

What we discussed

7.22 To understand participants' views on this defence we presented participants with a scenario in which a man kills a stranger after discovering them in the act of having sex with their wife. We then asked the public if:

- They thought the accused should be able to plead a defence.
- If so, whether a successful defence should be partial (leading to a conviction of culpable homicide) or complete (leading to acquittal).

7.23 We also probed further to understand if participants' views still applied in cases where the wife is killed rather than the stranger, where the accused is a woman rather than a man, and in cases where the accused kills after discovering the affair via text message (rather than catching their partner in the act of having sex with someone else).

What the public thought

Should this defence be available?

7.24 Many believe that an accused who killed immediately after discovering a partner in the act of having sex with another person should have an available defence, but some find it difficult to describe why. It may be that the accused has not displayed any premeditation in this situation or that the public think circumstances should be taken into account when considering a situation with very difficult dynamics such as this one.

7.25 In a situation where the accused commits the act after finding out about the illicit affair via texts on their partner's phone (as opposed to finding them *in flagrante*), there is strong agreement that the accused should not be able to plead a defence. Across the board, the public feel this displays a clear premeditation and intent to kill. They believe that the accused could have responded differently in such a situation, such as having a conversation with their partner.

"He's gone out of his way to plan this, there's clear premeditation."

- Female participant, aged 18-49, AB

"That's totally different [...] It's not something that just came out. There's an intent, there's premeditation, there's thinking, there's planning. To me, if there's all these things, it's murder. There shouldn't be a defence."

- Male participant, aged 50+, AB

If this defence should be available, should it be partial or complete?

7.26 It is agreed that an available defence of provocation through discovery of sexual infidelity in *flagrante* should only be partial. Many hope and expect that, in all but the rarest of cases, the defence would be unsuccessful, and the accused would be convicted of murder. The exception to this is a small group of the public who believe that the

"[It's] culpable homicide. His intention wasn't to kill him – it's like a heat of the moment thing, just a loss of control."

- Male participant, aged 50+, DE

defence of provocation should be successful in cases where it can be proved that the accused's mental state was significantly impacted by discovering their partner in the act of infidelity. The behaviour being out of character for the accused is also used as an important metric in judging whether a defence should be successful in such a scenario. Amongst the most likely to hold this view are men aged 50+.

- 7.27 Considering instead that the partner is the person killed rather than the stranger, most feel that their views would stand, and that while a partial defence should be available to the person, the accused should still be convicted of murder. Similarly, most believe their views would stay the same if the accused was female rather than male.

Killing as a result of coercion

What we discussed

- 7.28 To understand participants' views on this defence we presented participants with a situation in which a person is coerced into killing someone. We then asked the public if:
- They thought the accused should be able to plead a defence
 - If so, whether a successful defence should be partial (leading to a conviction of culpable homicide) or complete (leading to acquittal).

- 7.29 We also probed further to understand if participants' views still applied in cases where the accused was a member of a criminal gang and was being coerced in this context.

What the public thought

Should this defence be available?

- 7.30 For the most part, the public say that a defence of killing as a result of coercion should not be available, as the act shows a clear intent to kill. Furthermore, they expect that if the accused was truly worried about their safety in this scenario, they should seek help from the police. Whether or not the accused is part of a criminal gang makes no difference to the public's views on whether the accused should be able to plead a defence.

If this defence should be available, should it be partial or complete?

- 7.31 The few who think that the accused should be able to plead a defence of coercion believe that this should only be available in specific circumstances, such as an immediate threat to their or their family's lives. They believe that this should operate as a partial defence rather than a complete defence due to a perception that the offence is still considered serious and blameworthy.

"It depends on the circumstances. If it's 'Do this or I'll kill your kid, don't go to the police', you can understand John's state of mind."

- Female participant, aged 18-49, AB

"The danger to the person's life needs to be imminent [for the defence to be valid]."

- Female participant, aged 18-49, DE

Chapter 8: Conclusions

8.1 There are some key themes in the public's responses to these research questions, which can be applied to the Commission's future thinking on Scots homicide law.

8.2 **The public are sceptical of the usefulness of the term 'wicked' in the definition of murder and their responses suggest it should be removed.** In the case of intent, having 'intent to kill' is seen as sufficient without the use of the term 'wicked'. In the case of recklessness, the public's responses suggest that the term 'extreme', where it cannot be reasonably assumed that someone would not be seriously harmed or killed by an act, is a better descriptor. 'Extreme' is felt to better capture acts which the public feel should be considered murder, but where the accused might not be considered 'wicked'.

8.3 **The passage of time before a killing is absolutely vital to how the public view the blameworthiness of an act.** Across this piece, the public often suggest that the time to properly consider one's actions and their consequences, and the possibility of seeking alternative help in order to avoid danger, illustrate premeditation and in most cases mean a conviction of murder is appropriate (though there are some exceptions, such as third party intervention to prevent rape, due to the seriousness of rape).

8.4 **In cases where a victim is considered 'blameless', the public want to see consequences in Scots law for the accused's actions.** As such, they rarely feel that acquittal is appropriate in situations where the victim has not intended any wrongdoing or harm to the accused (or anyone else involved in the situation).

8.5 **The public understand these issues are complex, so often call for some subjectivity in the law that can reflect individual circumstances.** Although subjectivity in the law can sometimes be frustrating for the public, particularly in relation to specific cases they read about in the media, they do ultimately recognise it as being important due to the view that no two crimes are the same. The public want to see space for judges to take into account the circumstances surrounding an act, particularly in relation to whether the act was planned, whether the accused could have sought alternative help, and whether the accused could reasonably have felt their wellbeing and / or life was at risk.

Appendix

A.1. Detailed sample breakdown

Please find below a full breakdown of the participating research sample, which comprised 36 members of the Scottish public.

Category		Number of participants
Age	18-34	5
	35-49	12
	50+	19
Gender	Male	18
	Female	18
Ethnic background	White	31
	Other ethnic background	5
SEG	AB	12
	C1C2	13
	DE	11
Location	Edinburgh	4
	Glasgow	7
	South Scotland	4
	Central	15
	Highlands	2
	North East Scotland	4
Rurality	Urban	15
	Suburban	14
	Rural	7
Victim of a violent crime (either the participant themselves, or their close friend or family member)	Yes	3
	No	33

A.2. Content shared with participants

The following information was shown to participants during the focus groups and depth interviews. The information was shown in the order it appears below, with the exception of the offence scenarios A-C in which the order of testing was rotated across the focus groups and depth interviews to avoid order bias.

CONTEXTUAL INFORMATION

Information on the consultation:

The Scottish Law Commission is an independent statutory body. The Commission's role is to recommend reforms to improve, simplify, and update the law of Scotland.

At present, the Commission is carrying out a review of Scots homicide law, focussing particularly on the mental element in homicide. They are exploring how someone's mindset when committing a crime might impact the offence they are convicted of and the defences they might use. The Commission is doing this to consider whether, and how, any necessary proposals for updating the law should be made.

The Commission understands that this is a vitally important and sensitive area of the law which could affect anyone. They are using this exercise to understand the public's views on some of the key issues they'll need to consider when making their recommendations.

Definition of murder:

Murder is the more serious of the two offences.

It carries a mandatory life sentence, reflecting its severity.

For a conviction of murder, it must be proven that the accused had the required *mens rea*, or mental element. The *mens rea* of murder has two branches: it requires the accused either to have a wicked intention to kill, or to act with wicked recklessness, (i.e. not caring whether the victim lives or dies).

The person convicted also has to live with the moral implications of being labelled a "murderer" by society.

Definition of culpable homicide:

Culpable homicide is the less severe of the two offences.

It 'catches', or covers, unlawful killings which are blameworthy, but not sufficiently so as to be murder. It is therefore a very broad category.

Unlike murder, culpable homicide does not carry a mandatory life sentence. Rather, judges have discretion as to the sentence that is handed down to the accused.

OFFENCES

Offence scenario A:

In a desperate attempt to escape from the police, someone is driving a car at 60mph through a built-up area which has a speed limit of 30mph. The driver is running through red traffic lights, driving on the wrong side of the road, and causing other vehicles to take evasive action. Eventually, the driver collides with a man who was crossing the road in obedience to the 'green man' signal. The man is killed.

Offence scenario B:

A woman sets fire to the ground floor tenement flat of her former partner's new fiancée in order to frighten her. She checked prior to setting the flat on fire that her former partner was not inside. However, the fire spreads to the flat upstairs, and one of the residents is killed.

Offence scenario C:

A man devises a plan to raise awareness of climate change by pushing a large concrete block from a flyover onto a busy motorway to disrupt the traffic flow. As the concrete block falls, it crushes a car and creates a pile-up in which many are injured. The driver of the car is killed instantly.

Offence scenario D:

Two men get into a fight after a night of heavy drinking at the pub. Outside, one punches the other in the head. The impact of the punch knocks the man backwards. He falls and hits his head on the pavement kerb, with that head injury killing him.

DEFENCES

Definition of defences:

When charged with murder, a defence may be used by the accused. Defences are closely linked with the mental element (which requires the accused to either to have wicked intention to kill, or to have acted with 'wicked recklessness' – i.e., not caring whether the victim lives or dies). If the defence is successful: the accused may either receive a lesser conviction of culpable homicide, or be found 'not guilty' and acquitted. If the defence is unsuccessful: the accused will be found guilty of murder and will receive a mandatory life sentence.

Defence scenario A:

Joanna and Bernie have been married for 5 years, and have been together as a couple for 8 years. Throughout their relationship, Bernie has subjected Joanna to different forms of abuse, including physically assaulting her, verbally abusing her, controlling her finances, distancing her from her family, and on occasion has threatened to kill her.

During one physical assault, Bernie punches Joanna. Fearing for her life, Joanna reaches for a knife and stabs Bernie, killing him.

Defence scenario B:

A man is attempting to rape a woman. In the struggle, the woman reaches out, grabs a nearby rock and hits the man on the head with it. The man is incapacitated and killed.

Defence scenario C:

Omar assaults Darren outside a nightclub by punching him in the head several times and injuring him. In the heat of the moment, Darren loses his temper and self-control. Darren, without thinking, retaliates instantly by landing several equally forceful punches to Omar's head. The last punch knocks Omar to the ground and his head hits the pavement with some force, killing him.

Darren is charged with Omar's murder, but in court successfully argues the defence of provocation and is convicted of the lesser offence of culpable homicide instead.

Defence scenario D:

Kenny arrives home and walks upstairs to find his wife having sex with a stranger he does not know. He is upset and angry and loses self-control, brutally attacking the stranger and killing him as a result.

In court, Kenny claims that he was provoked by witnessing this act of sexual infidelity and that the killing occurred in the heat of the moment. His lawyer argues that, whilst his client is guilty of the killing, given the circumstances, he should be convicted of the lesser offence of culpable homicide rather than murder.

Defence scenario E:

John knocks on the door of someone and when they answer it, he shoots the person, killing him instantly. In court, he argues that he 'had to' kill that person as his own life was being threatened by someone else, unless he carried out the shooting for him.

A.3. Quotes from participants

Below is a select list of verbatim quotes from participants, recorded throughout the focus groups and depth interviews – including those used throughout this report. Quotes listed in relation to views on specific offences and defences are in relation to the specific scenarios presented to participants, as outlined in section A.2. of this report. This means that in some instances, quotes may include details specific to these scenario (e.g., pronouns, names etc.).

PUBLIC INTEREST AND ENGAGEMENT WITH THE TOPIC

"I'm not an expert, but it's not unknown to me – my knowledge comes from TV, documentaries, and books. I don't know the legislation that sits behind it." - Male participant, victim of crime

"I've only heard that term [manslaughter] in American movies." - Male participant, aged 50+, AB

SPONTANEOUS AWARENESS OF THE OFFENCE OF MURDER

"Murder is premeditated. You've planned it – it's not a spur of the moment thing or an accident." - Female participant, aged 18-49, AB

"I see it as murder's life, a life sentence. That's all really." - Male participant, aged 50+, DE

"I presume there is a difference from something like manslaughter...I assume the intention is the important part." - Male participant, aged 50+, AB

"Murder is not an accident, it is something you set out to do" - Female participant, aged 18-49, DE

SPONTANEOUS AWARENESS OF THE OFFENCE OF CULPABLE HOMICIDE

"I presume that is where you have caused the death of someone but it wasn't your intention like dangerous driving or an accident that was your fault but it wasn't your intention to kill someone." - Male participant, aged 50+, AB

"If you were in a fight and punched the person, they died but you didn't mean to kill them." - Female participant, aged 18-49, DE

"I'd consider culpable homicide something where there isn't a safe workplace. Where the employer hasn't provided the safety precautions to stop someone from dying." - Male participant, aged 50+, AB

"If I'm right, is that similar to manslaughter – you're causing a death, but it's not intended. It's a byproduct of what you've done. [For example] drunk driving and killing someone without intending to."
– Male participant, victim of crime

"For example, you're in your car [...] You think you're not over the limit, but you might be slightly over the limit, and you knock somebody down like a cyclist or whatever, and they die as a result of it. You didn't plan to go out and kill them." - Female participant, victim of crime

VIEWS ON DEFINITIONS OF MURDER AND CULPABLE HOMICIDE

"This one [culpable homicide] is a grey area [...] The last thing about judges having discretion says to me there's a range of outcomes from no conviction to up to, but not quite as much, as murder." - Male participant, aged 18-49, C1C2

"You could potentially have a drunk driver who could kill four people would that be murder? I suppose it doesn't have the wickedness label to it - I don't think they would have gone out of the way to kill those defined people." - Male participant, aged 50+, AB

"It's good that culpable homicide doesn't carry a life sentence. They're often accidents that people have to live with this for the rest of their life." - Female participant, aged 18-49, AB

"I think someone's mindset committing that crime is a continually moving thing. It could change in the minutes, days, weeks after [...] Nailing that down in law seems to be like trying to catch a cloud in your hand." - Male participant, aged 50+, AB

"My initial thought previously was that murder is murder and people should do life for murdering someone but, having time to think about it, I do think there's place for culpable homicide. For say those with mental health issues or psychosis... We have to leave it to the judge's knowledge on what murder is and could be." - Female participant, aged 50+, C1C2

VIEWS ON LANGUAGE AROUND WICKEDNESS

"It feels like a historic term to me, I don't think it's used in modern language very often." - Male participant, aged 18-49, C1C2

"Wicked' and 'evil' is who you are as a person. We can all do bad things, but that doesn't make us a bad person." - Female participant, aged 18-49, DE

"Wicked isn't used particularly regularly – it feels like an older term [...] That threshold of wickedness seems quite subjective and dependent on morals and upbringing." – Male participant, victim of crime

"It's very subjective. Any time when you use an adjective to describe someone is very much one person's opinion versus another's... and the word 'wicked' carries some weighty emotions behind it." - Male participant, aged 50+, AB

"I think the word 'wicked' is probably not the right one to use today. I think it's just either to have an intention to kill or act with recklessness. I don't think the term 'wicked' actually works – it's quite old fashioned." - Female participant, victim of crime

"If someone's gone out with intent to kill, that's murder to me [...] Does 'wicked' add anything to the clarity of what murder means? Does it need to be there?" - Male participant, aged 18-49, C1C2

VIEWS ON KILLING WITHOUT INTENTION TO INJURE

OFFENCE SCENARIO A – DRIVING TO EVADE THE POLICE

"[It's] murder because the man is acting in a completely selfish manner. He's only thinking about himself and his own survival. He's not interested in anyone or society, just himself and he's taken a life. It was an accident, but he should get a life sentence, he's taken someone's life so bang him up and throw away the key." - Male participant, aged 50+, DE

"I don't think he's gone out with intent and he's not thinking straight. He's panicked. So, I think it's culpable homicide. He did not intend to kill someone." - Female participant, aged 50+, C1C2

"I don't think there was wicked intention there but with culpable homicide, the judge can look at the circumstances and give a higher sentence. He's been reckless and during this scenario he's not thinking about anything or anyone else." - Female participant, aged 50+, C1C2

OFFENCE SCENARIO B – SETTING FIRE TO A TENEMENT FLAT

"It comes down to intent. [The intent is] to frighten someone, but there's got to be awareness around what you're doing. It's a ground floor and it's going to spread. I think the key word is recklessness, that's why I'd consider it murder." - Male participant, aged 18-49, C1C2

"She set out to do something malicious. She didn't want to kill anyone, but because of it, she's killed someone." - Male participant, aged 50+, DE

"It's not saying that she set out to kill the person, she set the fire in order to frighten the person. She didn't set out with wicked intention to kill. So again, I would say that was probably culpable homicide. She was reckless, people act strangely when new partners come on the scene, but they're not necessarily meaning to actually murder the person." – Female participant, victim of crime

OFFENCE SCENARIO A – PUSHING A CONCRETE BLOCK ONTO A MOTORWAY

"When you're intentionally pushing a concrete block onto a motorway, that's going to harm somebody." - Female participant, aged 18-49, DE

"I think murder, but I think you would struggle on the wicked intent because he's intending to raise awareness on climate change. I think the wickedness shouldn't be in the definition. The wickedness isn't there – he didn't wickedly intend to do that, he's just stupid." - Female participant, aged 50+, C1C2

VIEWS ON KILLING WITH A SINGLE PUNCH

"The [one to] blame is the alcohol. I don't see it as murder or culpable homicide. He's had a drink and some words have been said and he's turned around and thumped him. It's unfortunate that it ended the way it did." - Female participant, aged 50+, C1C2

"I think a new definition, classification would help here. There's some interesting videos on social media where people reflect on the incident along these lines it's like any one of us can find ourselves in a difficult situation, I think a new definition would help." - Male participant, aged 18-49, C1C2

"I don't think he was ever intending to kill the person. 9 times out of 10 they would fall back and not hit the kerb. Accidental death I would think would carry a lighter sentence." - Male participant, aged 50+, DE

"I've swayed on this before when watching documentaries on this as there is context here that matters. I think it is culpable homicide as there doesn't appear to be intent to kill. Do they know each other? have there been previous incidents? does the person punching have a history of violence? There is a lot of context missing here." - Male participant, victim of crime

"Not murder, because it can happen. You don't even have to be drunk for this to happen, for an argument to break out and for someone to push [someone else]. I think it should go to court, obviously it would go to court, but I'm not sure about murder or culpable homicide. I think they should get a lesser sentence – the others didn't mean to kill either didn't they? It's hard. You could be the nicest person and just have a fall-out, push or punch, even your best friend." - Female participant, digitally disengaged

VIEWS ON USING A DEFENCE IN CASES OF KILLING TO PREVENT RAPE

"It comes under self-defence again. She probably doesn't have any idea how far this will go. It's a very desperate situation [...] I think she should be acquitted." - Male participant, aged 18-49, C1C2

"I just don't think you can be sure what they're going to do. How do you know in that moment what's going to happen? They could be trying to steal your bag or it could be rape, you don't know, you just fear for your life." – Female participant, aged 50+, C1C2

"A rape is a rape, or even attempted rape, it's still intent to do harm." – Female participant, aged 50+, C1C2

"They would have a strong case for acquittal. There is no wicked recklessness or intent to kill. She hasn't chosen to be in this situation – she has grabbed the first thing she's seen and hit him as self-defence." – Male participant, victim of crime

"There needs to be some form of physical contact for her to claim that defence." – Female participant, aged 18-49, DE

"It doesn't matter who's being raped. I mean, men rape other men [...] It's a crime that's being committed." – Female participant, victim of crime

"[In cases of third party intervention] It's a bit of an excessive force one. It's one thing attacking him, it's another thing if he's picked up a rock." - Male participant, aged 50+, DE

"[In cases of third party intervention] I still think there's a defence in there [...] Unfortunately that guy's died, but ultimately he put himself in that situation by attempting to rape that woman, so whether it's a third party or the woman, I still think there's a defence." – Male participant, aged 18-49, C1C2

VIEWS ON USING A DEFENCE IN CASES OF KILLING AFTER BEING SUBJECTED TO DOMESTIC ABUSE

"I think acquittal because she reached the end of her tether and she was defending herself. When you're in that situation, sometimes you just can't get out. Obviously something has pushed her a step too far." - Female participant, aged 50+, C1C2

"This is self-defence and also she has clearly been subjected to ongoing coercive behaviour from her partner so there has been abuse too... I think this should be an acquittal." – Male participant, aged 50+, AB

"She's fearing for her life and there's a threat to her existence – that seems like a defence." – Male participant, aged 18-49, C1C2

"She's suffered badly over the years. It's a horrific thing for someone to go through and she was only protecting herself – what else could she do?" – Female participant, digitally disengaged

"I would say acquittal but I'm not 100% convinced. If she was fearing for her life, then I would say self-defence is enough of a reason to not be sentenced. If she did receive a sentence, I would expect it to be short." – Male participant, victim of crime

"[In cases where the offence occurs in the aftermath of an attack] It is not self-defence if there is not imminent danger." – Female participant, aged 18-49, DE

"[In cases where the offence occurs in the aftermath of an attack] Your life isn't really in danger, there are other options. You would have time to call the police." – Female participant, aged 18-49, AB

"[In cases where the victim is asleep at the time of the offence] That takes it to another degree of seriousness. It's becoming more premeditated then and starting to tick the murder box." - Male participant, aged 50+, AB

VIEWS ON USING A DEFENCE OF PROVOCATION IN CASES OF KILLING AS A RESULT OF ASSAULT

"Hitting his head on the pavement is what killed him. [The accused's] intention wasn't to kill him, just to punch him. - Male participant, aged 50+, DE

"He's [the accused] definitely started out as the victim, it's just unfortunate that that's been the end result." – Female participant, aged 18-49, AB

"In my opinion, physical abuse is a lot stronger than verbal abuse... The actual physical attack is something that is a bit more vicious." – Male participant, aged 50+, AB

"It doesn't seem as serious as fearing for their life, for their safety. I'd think the lesser offence [of culpable homicide] is warranted. Is there a defence – yeah, I think it's provocation – but again, we have to be responsible for our own actions. He says he did it without thinking and that's a luxury we can't afford to have." – Male participant, aged 18-49, C1C2

"[In cases where the accused is provoked by verbal abuse] The person used words, you just have to rise above it and not retaliate [...] Punching's not a proportionate reaction." – Female participant, aged 18-49, AB

"[In cases where the accused is provoked by verbal abuse] There is a reasonable defence for Darren protecting his own life by retaliating, but verbal abuse isn't going to lead to Darren's death." – Male participant, aged 50+, AB

"[In cases of third party intervention] I think there should be some kind of defence, but it's whether the judge and the jury believe that the third party's intentions were to simply stop the friend being assaulted, or did they lose control as well?" – Female participant, victim of crime

"[In cases of third party intervention] There's no need for the third person to intervene with violence, they can just pull the person away" – Female participant, aged 18-49, AB

VIEWS ON USING A DEFENCE OF PROVOCATION IN CASES OF KILLING AS A RESULT OF DISCOVERY OF SEXUAL INFIDELITY

"The stranger didn't brutally attack him. It's not a proportionate response. It's not culpable homicide." – Female participant, aged 18-49, AB

"I think it's murder. He's angry and he's lost control, but he's gone out to harm the person. He could have thrown them out, but he didn't." – Female participant, aged 50+, C1C2

"There is provocation there because he found his wife with a stranger, but is that enough to be convicted of a lesser charge? I'd struggle with that one." – Male participant, aged 18-49, C1C2

"[It's] culpable homicide. His intention wasn't to kill him – it's like a heat of the moment thing, just a loss of control." – Male participant, aged 50+, DE

"He could claim a defence. You would lose your mind if you witnessed this." – Female participant, aged 18-49, DE

"[If the offence occurs after discovering the affair through text messages] He's gone out of his way to plan this, there's clear premeditation." – Female participant, aged 18-49, AB

"[If the offence occurs after discovering the affair through text messages] That's totally different [...] It's not something that just came out. There's an intent, there's premeditation, there's thinking, there's planning. To me, if there's all these things, it's murder. There shouldn't be a defence." – Male participant, aged 50+, AB

VIEWS ON USING A DEFENCE IN CASES OF KILLING AS A RESULT OF COERCION

"Everyone needs a defence. Whatever defence that is going to help your case, that's what you should go with." – Female participant, aged 18-49, DE

"We don't just take the law into our own hands. If you've been threatened by someone, you report that to the police and appropriate protection goes in place. That, to me, is the course of action in that scenario." – Male participant, aged 50+, AB

"It depends on the circumstances. If it's 'Do this or I'll kill your kid, don't go to the police', you can understand John's state of mind." - Female participant, aged 18-49, AB

"The danger to the person's life needs to be imminent [for the defence to be valid]." - Female participant, aged 18-49, DE

"[In cases where the accused is a member of a criminal gang and was being coerced in this context] It doesn't matter what he is. If that was the case, they should be going to the police about it." Male participant, aged 50+, DE