Response to the further consultation of the Sentencing Council on immigration offences

September 2026

The Criminal Bar Association

The Criminal Bar Association (the 'CBA') represents the views and interests of practising members of the Criminal Bar in England and Wales. The CBA's role is to promote and maintain the highest professional standards in the practice of law; to provide professional education and training and assist with continuing professional development; to assist with consultation undertaken in connection with the criminal law or the legal profession; and promote and represent the professional interests of its members.

The CBA is the largest specialist Bar association and represents all practitioners in the field of criminal law at the Bar. Most practitioners are in self-employed, private practice, working from sets of Chambers based in major towns and cities throughout the country. The international reputation enjoyed by our Criminal Justice System owes a great deal to the professionalism, commitment and ethical standards of our practitioners. The technical knowledge, skill and quality of advocacy all guarantee the delivery of justice in our courts, ensuring that all persons receive a fair trial and that the adversarial system, which is at the heart of criminal justice in this jurisdiction, is maintained.

The email contact details for the CBA are:

aaron.dolan@criminalbar.com.

These written submissions are provided on behalf of the Criminal Bar Association.

As indicated in the CBA's response of June 2024, the CBA welcomes the introduction of dedicated sentencing guidelines for Immigration offences under the Immigration Act 1971 and the Identity Documents Act 2010.

Likewise, the CBA welcomes the provision of a guideline in relation to the distinct offence of Endangering another during a sea crossing to the UK (Immigration Act 1971, s.24(E1A)); as well as the re-consultation for the offence of Assisting unlawful immigration to the UK (Immigration Act 1971, s.25) and Helping asylum seeker/s to enter the UK (Immigration Act 1971, s.25A). It is clear such additional draft Guideline will be of assistance to practitioners and Sentencing Courts in a complex and nuanced area.

The CBA focuses its response submissions on the aspects of the Consultation it seeks further consideration be given to by the Sentencing Council.

Endangering another person during a sea crossing to United Kingdom - s.24(E1A) Immigration Act 1971

Question 9: Do you have any comments on the proposed culpability factors (including from the perspective of equality and diversity)?

The offence under s.24(E1A) Immigration Act 1971 in essence creates an 'aggravated' offence of illegal entry under s.24(A1), (B1), (D1) or (E1) Immigration Act 1971.

The previous consultation in June 2024 set out draft guidelines in relation to the offences under s.24(A1), s.24(B1) and s.24(D1) Immigration Act 1971.

It is unclear currently how the draft guideline for s.24(E1A) offences is to be utilised and fit with the draft guidelines for the non-aggravated offences (or for s.24(E1) Immigration Act 1971, where no draft guideline was published).

The draft guideline does include in its sub-heading that 'the level of culpability is determined by weighing all the factors of the case.'

The list of factors relating to culpability in the draft guideline relate to the manner in which the boat has effectively been steered.

The CBA would ask for consideration of factors concerning culpability for s.24(A1), s.24(B1) and s.24(D1) to also be included within the draft guideline for s.24(E1A) offences; to ensure clarity and consistency in sentencing approaches.

One example relates to factors such as where an offender has been involved on account of 'coercion, pressure, exploitation, slavery or trafficking.' The CBA would ask consideration for this to be included (akin to the facilitation draft guideline, as well as factors present in the draft guideline for s.24(A1), s.24(B1) and s.24(D1) offences draft guideline).

A clear example for potential discrepancies arises for the example of an offender being sentenced for s.24(E1A) offence, concerning an aggravated s.24(E1) offence, where no draft guideline was previously published.

Question 10: Do you have any comments on the proposed harm factors (including from the perspective of equality and diversity)?

The statutory definition of the offence requires that in circumstances where a journey was by water from France, Belgium or the Netherlands; and under s.24(E1A)c that 'at any time during the relevant period an accused did an act, that caused or created a risk of the death of, or serious personal injury to another person.'

S.24(E1B) provides that personal injury includes physical or psychological injury.

The draft Sentencing Guideline provides the following in relation to proposed harm factors:

> Category 1 – death caused
>
> Category 2 – serious physical or psychological harm caused
>
> Category 3 – all other cases.

The statutory definition of the offence includes not merely instances where serious physical or psychological harm was in fact caused; but also circumstances where an accused has created a risk of death or serious personal injury (be it physical or psychological harm).

It would assist if the Guideline could clarify where 'risk' cases are to be categorised.

For example, if there was a risk of death – but no actual death, nor actual serious physical harm was caused, it is unclear if the Guideline intends for harm to be in fact placed into category 3.

In an example where there is a risk of serious physical harm being caused, but none results (purely on the basis of luck), it is unclear if the draft Guideline intends for this to result in harm being that of category 3.

The CBA are concerned that the current draft guideline may create an unintended divergent approach from the 'General guideline: overarching principles.'

The overarching principles guideline provides the following:

> *'Where harm was intended but no harm or a lower level of harm resulted- the sentence will normally be assessed with reference to the level of harm intended.*
>
> *Where the harm caused is greater than that intended- the sentence will normally be assessed with reference to the level of harm suffered by the victim.*
>
> *Dealing with a risk of harm involves consideration of both the likelihood of harm occurring and the extent of it if it does.*
>
> *Risk of harm is less serious than the same actual harm. Where the offence has caused risk of harm but no (or less) actual harm the normal approach is to move down to the next category of harm. This may not be appropriate if either the likelihood or extent of potential harm is particularly high.'*

It may assist practitioners if the guideline is able to provide signposting to the above overarching principles guideline within the offence specific guideline and also to indicate where 'risk of harm' cases are to be categorised.

FACILITATION OFFENCES - s.25 and s.25A Immigration Act 1971

https://sentencingcouncil.org.uk/guidelines/facilitation-for-consultation

Question 13: Do you have any comments on the revised culpability factors (including from the perspective of equality and diversity)?

The CBA in their Consultation response of June 2024 sought consideration (at Q5 response) to the Lower Culpability C bracket being expanded to include the facets of 'involved due to coercion, pressure or relevant exploitation or trafficking.'

This was to ensure that in such offence, where s.45 Modern Slavery Act 2015 could not apply as a statutory defence to a charge under s.25 Immigration Act 1971; that if relevant, a Sentencing Court could still take such matters into account, in terms of reflecting a lower level of culpability.

The CBA are grateful to the Sentencing Council for considering the above suggestion and incorporating such approach within the amended draft Guideline to include under Culpability C 'involved due to coercion, exploitation, slavery or trafficking.' The CBA has no further comments in relation to the revised culpability factors.

Question 15: Do you have any comments on the revised sentences?

The revised Sentencing brackets correctly and clearly reflect that Parliament has increased the statutory maximum sentence from 14 years to life.

The breadth of discretion available to a Sentencing Judge in relation to Culpability factors is significant in such cases, and the Sentencing levels accord with the principles from the Court of Appeal in R v Ahmed [2023] EWCA Crim 1521 and R v Bah [2024] EWCA Crim 1499.

Question 16. Do you have any comments on the revised aggravating factors?

The draft Guideline includes an additional aggravating factor of 'Facilitating entry of individuals for the purpose of engaging in criminal activity.'

The CBA raises potential difficulties emanating from:

- The breadth of this aggravating factor;
- How this potential factor is to be proven, in the context of a sentencing hearing;
- How in practice the level of knowledge or awareness an accused would be established.

The act of facilitation may relate to individual sections of a journey, and there may be limited knowledge or awareness of whom an accused is even facilitating, let alone the onward purpose.

A further difficulty arises as the wording of ‘criminal activity’ may encapsulate individuals involved in ‘illegal working’ per se practices (namely working without lawful immigration status for example); when in contrast it is assumed such aggravating factor is to cover instances such as the facilitating of individuals for purposes of criminal activity such as cannabis cultivation or organised burglaries.

The CBA raise an additional concern that the inclusion of the above aggravating factor risks conflation with the offence under s.2 Modern Slavery Act 2015. For s.2(1) MSA 2015 provides that a ‘person commits an offence if the person arranges or facilitates the travel of another person (“V”) with a view to V being exploited.’ Forced Criminality would be considered exploitation within the meaning of s.3 Modern Slavery Act 2015 and forms part of a sub-set of forced or compulsory labour.

Question 17: Do you have any comments on the revised mitigating factors?

The CBA agrees with the revised mitigating factors to ensure inclusion of the additional mitigation factor of ‘pregnancy, childbirth and post-natal care.’ This is considered appropriate and accords with other published guidelines.

The Criminal Bar Association

30th September 2026.